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SUPREME COURT OF THE UNITED STATES.

No. 51.

PAUL MAYO, CLAIMANT OF THE BRIG "CLEMENT," App't,

vs.

MATTHEW HUNT, REUBEN S. HUNT, HENRY O. HUNT, and ASA JOSSELYN, Libellants.

APPEAL FROM THE CIRCUIT COURT U. S. FOR THE DISTRICT OF MASSACHUSETTS.

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UNITED STATES OF AMERICA,
Massachusetts District, ss.

At a Circuit Court of the United States for the First Circuit, begun and holden at Boston, within and for the District of Massachusetts, on Monday, the fifteenth day of October, in the year of our Lord one thousand eight hundred and fifty-five, before the Honorable Benjamin R. Curtis, Associate Justice, and the Honorable Peleg Sprague, District Judge:—

MATTHEW HUNT *et als.*, Libellants,
VERSUS
THE BRIG "CLEMENT," Paul Mayo, Claimant and Appellant.

The transcript from the records of the District Court in this cause was filed in the Clerk's office of this Court on the 16th day of May, A. D. 1855, and is in the words and figures following, to wit:—

UNITED STATES OF AMERICA,
Massachusetts District, ss.

At a special District Court of the United States, holden at Boston, within and for the District of Massachusetts, on Friday, the 27th day of October, A. D. 1854, before the Honorable Peleg Sprague, Judge, Matthew Hunt *et als.*, Libellants, *versus* the brig "Clement."

This libel was filed in Court on the 14th day of June, A. D. 1854, and is as follows, videlicet:—

To the Honorable Peleg Sprague, Judge of the District Court of the United States within and for the District of Massachusetts:—

The libel and complaint of Matthew Hunt, Reuben S. Hunt, both of Boston, pilots, owners of the late schooner "Hornet," her tackle, apparel, and furniture, Henry O. Hunt, and Asa Josselyn, all of Boston, pilots, against the Brig "Clement" of Boston, whereof Hawes is, or late was, master, now lying in the port of Boston, and within the maritime and admiralty jurisdiction of this Honorable Court, her tackle, apparel, and furniture, and against all persons lawfully intervening for their interest therein, in a cause of collision, civil and maritime; and thereupon the libellants allege and articulately propound as follows, viz:—

First. That the said Matthew and Reuben S. Hunt were the owners of the schooner "Hornet," of about 53 tons, and that she was used by them in the course of their business, together with the other libellants, as pilots in Boston Harbor; that up to the time of the occurrence hereinafter alleged, the said schooner was tight, staunch,

and strong, well built and equipped, and was in every way seaworthy and fit for the business in which she was employed.

Second. That about one o'clock on Saturday, the tenth day of June, 1854, the said schooner, after having put the libellants on board of divers vessels in the regular course of their business, was returning to Boston, as is customary, in charge of the boat-keeper and steward, who were good seamen and fully competent to take charge of and navigate the said schooner.

Third. That said schooner and the said brig were both on the starboard tack, heading in towards "the Graves," so called, lying in Boston Harbor, about half way between Nahant Head and the Outer Brewster, bound into Broad Sound, with the wind fresh, northwest by west, and were going about eight knots an hour, when the brig, which was to windward, when about half a mile from the Graves, suddenly put her helm up and kept off at four points and struck the schooner on the starboard quarter so violently that she took the mainmast by the force of the concussion entirely out of the schooner, and being driven by the wind violently forward, owing to her superior weight and size, and having the wind free, completely submerged the schooner, whereby she filled with water and sank and was wholly lost, together with the clothes and other property of the libellants on board of her.

Fourth. That at the time of said collision the wind was fresh, the sea smooth, and the weather fine; that the said collision was wholly caused by the gross negligence of the master and crew of the brig, and that it was impossible for the schooner to have got out of the way of the brig after she began to alter her course as alleged; that there was plenty of room for the brig to have gone over to the other tack, or to have gone ahead and kept on her course, as the vessels were not within half a mile of the Graves; that the sudden change of the course of the brig was wholly unnecessary and unexpected by those on board the schooner, because the brig had been keeping a course as if she intended to weather the Graves, and go up to Boston through Broad Sound, and she might and would have gone clear of the schooner had she kept her course or tacked; but instead of doing so, while she was close to windward of the "Hornet," she bore away so suddenly that there was no time for the schooner to get out of her way. That the schooner, from the first, made no change in her course, because she was sailing so near the wind that she could not luff, and she had no time to bear off after the change in the course of the brig.

Fifth. That by reason of the said schooner's having been run down by the brig, as is alleged, the libellants, Matthew Hunt and Reuben S. Hunt, have sustained damage to the amount of $3,320—namely, the said schooner, &c., valued at and worth $3,000; and clothing and other property to the amount of $160 each; and the libellants, Henry O. Hunt and Asa Josselyn, clothing and other articles worth one hundred dollars each.

Sixth. That all and singular the premises are true, and within the admiralty and maritime jurisdiction of this Honorable Court; in verification whereof, if denied, the libellants crave leave to refer to the depositions and other proofs to be by them exhibited in this cause. Wherefore the libellants pray, that process in due form of law, according to the course of Courts of Admiralty and of this Honorable Court in causes of admiralty and maritime jurisdiction, may issue against the said brig "Clement," her tackle, apparel, and furniture, and that all persons having, or pretending to have any right, title, or interest therein, may be cited to appear and answer all and singular the matters so articulately propounded, and that this Honorable Court would be pleased to pronounce for the damages aforesaid, and to decree such other relief to the libellants as shall to law and justice appertain, and also to condemn the said brig, her tackle, apparel, and furniture, and all persons intervening for their interest therein, in costs.

MATTHEW HUNT.

C. P. CURTIS, JR.,
Proctor for Libellants.

June 14, 1854. Subscribed and sworn before me,

WM. S. DEXTER,
Clerk District Court, pro tem.

Whereupon, by order of the Judge a warrant and monition issued, commanding the Marshal to give notice to all persons concerned, that said libel had been filed, and that trial would be had thereon, at a special District Court to be holden at the Court House in Boston, in said District of Massachusetts, on Friday, the 23d day of June, A. D. 1854, at 10 o'clock A. M.; and to give said notice by advertising the same in one of the public newspapers printed at Boston, and by posting a copy of the same notice at the Court House in Boston eight days at least before said day of trial. And directing him to take said brig "Clement," her tackle, apparel, and furniture, into his custody, and to make due return of his doings.

On which said Marshal made return as follows:—

UNITED STATES OF AMERICA,
Massachusetts District, ss.

BOSTON, June 15, 1854.

Pursuant hereunto, I have given notice to all persons concerned, that the libel within named has been filed, and that trial will be had thereon, by publishing the substance of the within monition in the *Boston Post*, a newspaper printed in Boston in said district, and by posting up a copy of the same notice in the Court House in said Boston eight days at least before the day within named for trial;

and on the 14th day of said June I took the brig "Clement," her tackle, apparel, and furniture, into my custody, on this warrant, and on the 15th day of said June the said brig "Clement" was delivered by order of Court.

WATSON FREEMAN,
U. S. Marshal.

Then personally appeared Paul Mayo, of Chatham, in the District of Massachusetts, and produced for surety Ephraim Lombard, of Boston aforesaid. And the said Paul and Ephraim, submitting themselves to the jurisdiction of this Court, bound themselves and their heirs, executors, and administrators jointly and severally in the sum of two hundred dollars unto the said libellants, that the said Paul Mayo should pay all costs and expenses which should be awarded against him in this suit, upon the final adjudication thereof, or by any interlocutory order.

And on said 15th day of June, A. D. 1854, the following Claim was filed in Court:—

To the Honorable Peleg Sprague, Judge of the District Court of the United States for the District of Massachusetts:

The claim of Paul Mayo, of Chatham, of said district, in behalf of himself and others, owners of the brig called the "Clement." And thereupon this libellant alleges, that he and others are sole owners of the said vessel, and that he is the ship's husband and managing owner thereof, and he respectfully prays that the same may be delivered to him upon his giving bonds in the manner prescribed by law.

PAUL MAYO.

U. S. DISTRICT COURT,
Mass. District, ss. June 15, 1854.

Subscribed and sworn to before me,

WM. S. DEXTER,
Clerk pro tem.

Then also appeared the said Paul Mayo, and produced for surety the aforesaid Ephraim Lombard; and the said Paul and Ephraim, submitting themselves to the jurisdiction of this Court, bound themselves and their heirs, executors and administrators, jointly and severally in the sum of four thousand dollars, unto the said libellants, that the said Paul Mayo should abide by all orders and decrees, interlocutory or final, of the Court; and should pay the amount of the final decree of the Court, and all sums of money that he should be ordered to pay by the final decree of the Court, whether it be in this or any appellate Court.

Whereupon, by order of the Judge, a warrant to deliver issued,

directing the Marshal to cause said brig and appurtenances to be delivered to the claimant aforesaid.

On which the Marshal made return as follows:—

UNITED STATES OF AMERICA,
Massachusetts District, ss.

BOSTON, June 15, 1854.

Pursuant to the within precept, I have caused the within named brig "Clement" to be delivered to the claimant within named, and have taken his receipt for the same, as under.

F. WARREN,
Dep. Marshal.

Received from W. Freeman, Marshal in and for the District of Massachusetts, the within named brig "Clement," her tackle, apparel, and furniture, in the same state as when seized and detained by his deputy.

PAUL MAYO,
Part owner and ship's husband brig "Clement."

And on the 22d day of June, A. D. 1854, the following Answer was filed in the Clerk's Office, viz:—

To the Honorable Peleg Sprague, Judge of the District Court of the United States for the District of Massachusetts.

The answer of Paul Mayo, of Chatham, in said district, in behalf of himself and other owners of the brig called the "Clement," to the libel of Matthew Hunt and others; and thereupon this respondent alleges as follows:—

First. That he has no knowledge, except from the said libel, of the statements contained in the first article of said libel, and neither admits nor denies the same.

Second. That he has knowledge, except from the said libel, of the statements contained in the second article thereof, and neither admits nor denies the same.

Third. That he is informed, and believes, that the statements contained in the third article of said libel are not true, and so denies the same, and upon his information and belief states the facts to be as follows:—

That the said brig, at the time mentioned, was off the Graves, and to the leeward thereof, and was bound for and heading towards the lighthouse channel, and was making headway at the rate of about six or seven knots an hour, having the wind about two points free. That the said schooner, at the same, was to leeward of the brig, and sailing faster than the brig and nearer to the wind, and in such a direction as must bring her across the course of the brig, either ahead or astern. That no particular attention was paid to said

schooner until it was perceived that she was very near the brig, and so near as to make a collision imminent by attempting to run across the bows of the brig, when she was hailed from the brig, and told to keep off, which might easily have been done; that the hail was heard and acknowledged on board the schooner, but her course was not altered, and she kept on directly across the bows of the brig; that then, a collision being apparently inevitable, the master of the brig ordered the helm to be put down and not up, which was done, and the brig's head brought to the wind. That if the course of the brig had not been changed, or if her helm had not been put up, she would have run right over the schooner, and sunk her; whereas, by putting her helm down she avoided a collision, but unfortunately the jib-boom of the brig caught in the main rigging of the schooner, and drew out her mainmast and tipped her over, so that she filled with water and sank.

Fourth. That he is informed, and believes, that the statements contained in the fourth article of said libel are not true, and so denies the same; and upon his information and belief states that there was no negligence on the part of the brig; that she was not bound to alter her course to let the schooner pass across her bows; that her course was not altered until contact was inevitable, and then in such a manner as to lessen the effect thereof as much as possible. That at the time the brig was abreast of the Graves, or nearly so, and so nigh thereto that she could not have tacked without danger of going thereon; that the brig's course was not changed, but that she kept straight on, and that she was not bound to, nor did she keep a course towards Broad Sound, and that she did not bear away at any time: And this respondent is informed and alleges, that the accident to said schooner was owing to carelessness and negligence in her navigation, and in attempting to run across the bows of the brig, instead of passing under her stern; and that, by keeping off, after she was hailed from the brig, any collision might have been avoided; whereas, nothing could have been done on board of the brig to that end.

Fifth. That this respondent denies that the libellants have suffered any damage by reason of anything done, or omitted to be done, on the part of the master, officers, or crew of the said brig; and that he knows nothing respecting the value of said schooner, and the property on board thereof.

Sixth. That by reason of the careless and negligent navigation of said schooner, in running across the bow of the brig, the foreyard, topmast, studding-sail, boom and iron martingale, stay and topgallant-stay were carried away, the foretopgallant-mast sprung, and sundry other damages done to the said brig, amounting in all to the sum of about sixty dollars, for which the owners of the said schooner are justly responsible. Whereupon, this respondent prays that this honorable Court would be pleased to pronounce against the said libel,

and to condemn the libellants in costs, and to decree to this respondent the amount of damages suffered by him as aforesaid.

PAUL MAYO.

F. C. LORING,
Proctor.

CIRCUIT COURT U. S.,
Mass. District. June 22, 1854.

Sworn to by said Paul Mayo, before me,

H. W. FULLER,
Clerk.

This libel was entered at a Special District Court, held on said 14th day of June, A. D. 1854; and thence was continued from time to time until this 27th day of October, A. D. 1854: And now, after a full hearing of the cause, upon the facts proved and arguments of counsel, and mature deliberation thereon had, it is ordered, adjudged, and decreed by the Court, that the said libellants do recover against the aforesaid brig "Clement" the sum of five thousand dollars, damages, and costs of suit, taxed at one hundred and thirty-three dollars and forty-six cents.

And on the 4th day of November, A. D. 1854, the following appeal was filed in the Clerk's office, viz:—

UNITED STATES DISTRICT COURT:

HUNT, Libellant,
v.
THE "CLEMENT," (Mayo, Claimant.)

And now the said Mayo claims an appeal from the decree of this honorable Court, condemning the said vessel in damages and costs, and for the reasons of appeal, assigns that the decree should have been in favor of the claimant and not of the libellants.

F. C. LORING,
Proctor.

Whereupon the said appeal was allowed by the Court.

I, Elisha Bassett, Clerk (pro tempore) of the District Court of the United States for the District of Massachusetts, hereby certify that the foregoing is a true copy of the record in the said cause.

[COPY SEAL OF DISTRICT COURT.] In witness whereof I have hereunto subscribed my name and affixed the seal of the said court this twentieth day of April, A. D. 1855.

Attest, ELISHA BASSETT,
Clerk pro tem.

After such appeal was entered in this Circuit Court, the following evidence was, by consent of parties, filed in said cause and used at the hearing thereof, to wit:—

Libellants' Depositions.

Deposition of Abel T. Hayden.

MATTHEW HUNT *et al.*
vs.
THE BRIG "CLEMENT."

DISTRICT COURT OF THE UNITED STATES
for the District of Massachusetts.

UNITED STATES OF AMERICA,
District of Massachusetts.

Be it remembered that on the twenty-first day of June, in the year of our Lord eighteen hundred and fifty-four, at Boston, in said District of Massachusetts, before me, Elias Merwin, a commissioner in and for the District of Massachusetts, to take affidavits and bail in civil causes depending in the courts of the United States, appointed by the Circuit Court of the United States for the First Circuit, under the acts of Congress in such case made and provided, personally appeared Abel T. Hayden, a witness of sound mind and lawful age, a witness for the libellants in a certain civil suit depending in the District Court of the United States in and for the Circuit and District of Massachusetts, wherein Matthew Hunt *et al.* are libellants, *vs.* the Brig "Clement;" and the said Abel T. Hayden, being by me first carefully examined, and cautioned and sworn to testify the whole truth, did depose and say as follows, in answer to interrogatories propounded by C. P. Curtis, Jr., Esq., proctor of the libellants.

Int'y 1. What is your name, age, and business? how long have you been so engaged?

Ans. to int'y 1. My name is Abel T. Hayden, my age is forty-five years, and I am a pilot in Boston harbor, and have been for over twenty years.

Int'y 2. Were you in the bay on the 10th of June when the Hornet was run down and sunk? If yea, on what vessel and where?

Ans. to int'y 2. I was in the bark Robert Mills, bound to Boston. I was to the eastward of the Graves, two or three miles from them, standing in.

Int'y 3. Which way was the wind and how much of it was there?

Ans. to int'y 3. The wind was baffling; it was about west-northwest; sometime it would be farther to the north and then further to the west.

Int'y 4. What was the first you saw of the collision?

Ans. to int'y 4. I had just tacked ship to go into Broad Sound.

I saw the brig in contact with the schooner. The brig was acting so curious I could not tell what she was doing. I saw she was luffing up in the wind. Soon as the pilot-boat settled down, the brig dropped her peak and wore around.

Int'y 5. Where were those two vessels at the time the Hornet sank? What range did you take at the time, if any?

Ans. to int'y 5. I had a ranging mark, Long Island-head on to Green Island. The vessels were in that range, to the south'ard and east'ard of the Graves.

Int'y 6. How far distant from the Graves were they by that range?

Ans. to int'y 6. By the appearances from the position I was in, I should think from two to three hundred rods.

Int'y 7. Is there a buoy on the Graves? If not, where is the nearest buoy to them, and how far is that from the Graves?

Ans. to int'y 7. There is a buoy on the northeast ledge of the Graves. It is about half a mile, perhaps not quite so far, from the Graves.

Int'y 8. Did you see her spars and rigging afterwards on the surface of the water?

Ans. to int'y 8. I did. I went within twenty or thirty rods of them, I should think.

Int'y 9. How near to the Graves were they, and were they adrift or fast to the mast of the schooner?

Ans. to int'y 9. I saw what I supposed was her mast. I did not notice how far they were from the Graves. I suppose two or three hundred rods from the Graves. I saw a schooner fast to the Hornet on the bottom yesterday about where I saw the spars.

Int'y 10. Whether or not was there room enough for a vessel to tack between the Graves and the place where the vessels came in contact?

Ans. to int'y 10. Plenty of room for any ship.

Int'y 11. Which way did you come up to Boston Harbor that day, Broad Sound or Lighthouse Channel?

Ans. to int'y 11. Broad Sound.

Int'y 12. Which had the wind fairest, Broad Sound or Lighthouse Channel?

Ans. to int'y 12. The Broad Sound.

Int'y 13. Did you see the brig luffing before the collision?

Ans. to int'y 13. I did not.

Int'y 14. Have you any interest in the schooner Hornet?

Ans. to int'y 14. Not in the least.

And in answer to *cross interrogatories* propounded by F. C. Loring, Esq., proctor of respondents, the said deponent further saith:—

1 + int'y. Is there any channel between the ledge on which the buoy is and the Graves?

Ans. to 1 + int'y. No, sir.

2 + int'y. Is not this ledge in fact a continuation of the Graves?

Ans. to 2 + int'y. I should think it was.

3 + int'y. When speaking of the distance of the brig and schooner from the Graves, and of where you saw the rigging on the water, do you speak accurately, or is it a mere matter of guess?

Ans. to 3 + int'y. Of course I cannot tell within a few feet, or perhaps a few rods. It is a mere matt - of judgment. I can judge pretty well.

4 + int'y. How far from the vessels were you at the time they came in contact?

Ans. to 4 + int'y. From two to three miles, I should think.

Direct Examination Resumed.

1 dir. int'y res'd. When you tacked ship and went near the Graves, did you go to the eastward or westward of them?

Ans. to 1 dir. int'y res'd. I went to the eastward of them.

2 dir. int'y res'd. Did you look at the vessels in contact with or without a glass?

Ans. to 2 dir. int'y res'd. With a glass.

ABEL T. HAYDEN.

Com'ss'r fees,	$5 00
Witness,	1 55
	$6 55

UNITED STATES OF AMERICA,
District of Massachusetts.

I, Elias Merwin, a Commissioner in and for the District of Massachusetts, to take affidavits and bail in civil causes depending in the Courts of the United States, appointed by the Circuit Court of the United States for the First Circuit, under the Acts of Congress in such case made and provided, do hereby certify that the reason for taking the foregoing deposition is, and the fact is, that the testimony of the said witness is material on the trial of the cause named in the said caption; that the parties agreed upon the time and place of taking the same, and that on the said twenty-first day of June they did attend the taking of the same by their respective proctors.

I further certify that the said deposition was by me reduced to writing in the presence of the witness, and that he subscribed the same in my presence, and that I have retained it for the purpose of forwarding it under my own hand to the Court for which it was taken, with this certificate of the reason of its being taken.

I further certify that I am not of counsel, or attorney, to either of the parties in the cause in and for which the said deposition is taken, or interested in the event of said cause.

In testimony whereof I have hereto set my hand and seal this

twenty-first day of June, in the year of our Lord eighteen hundred and fifty-four.

E. MERWIN,
Commissioner to take affidavits and bail of the Circuit Court U. S., Mass. District.

Deposition of George D. Upham. (For Libellants.)

MATTHEW HUNT *et al.*
vs.
THE BRIG "CLEMENT" AND OWNERS.
In Admiralty.

DISTRICT COURT OF THE UNITED STATES
for the District of Massachusetts.

UNITED STATES OF AMERICA,
District of Massachusetts.

Be it remembered, that on the tenth day of July, in the year of our Lord eighteen hundred and fifty-four, at Boston, in said District of Massachusetts, before me in and for the District of Massachusetts, to take affidavits and bail in civil causes depending in the Courts of the United States, appointed by the Circuit Court of the United States for the First Circuit, under the acts of Congress in such case made and provided, personally appeared George D. Upham, mariner, a witness of sound mind and lawful age, a witness for the libellants in a certain civil suit depending in the District Court of the United States in and for the District of Massachusetts, wherein Matthew Hunt *et al.* are libellants, and Paul Mayo is claimant. And the said Upham being by me first carefully examined, and cautioned and sworn to testify the whole truth, did depose and say as follows, in answer to the following interrogatories in behalf of the libellants, by C. P. Curtis, Jr., Esq.:—

Int'y 1. What is your name and business? How long have you followed the seas, and in what capacities?

Ans. George D. Upham. I am a boat-keeper. I have followed the seas eight years, before the mast, second mate and mate.

Int'y 2. Were you the boat-keeper on board the Hornet on the 10th of June, 1854, when she was run down by the brig Clement? How long had you been her boat-keeper?

Ans. I was; and had been about a year.

Int'y 3. What was the condition of the Hornet before the collision, and what was her size?

Ans. She was in first-rate condition; she was about fifty-six tons; her hull and rigging were in good order; she was staunch and tight.

Int'y 4. Please state where you were coming from, and where you were going when the collision took place?

Ans. We were coming from Mid Bay, bound up Broad Sound to Boston, and sailing on the starboard tack.

Int'y 5. Had you spoken the brig before that morning? if so, when, and what had she been doing since then, and how had she been sailing?

Ans. We had spoken the brig before between seven and eight o'clock that morning about fifteen miles to the eastward of Boston Light. The brig had been beating to windward since then, working down the north shore, sailing by the wind.

Int'y 6. Which way was the wind, and how much of it was there that morning?

Ans. West-northwest; a six or seven knot breeze.

Int'y 7. About what time did the collision occur, and how do you fix it?

Ans. One o'clock exactly; I fix it by the clock on board the Hornet. I came up from my dinner, and when I came up, by the clock it wanted twenty minutes just to one. I should judge it was fifteen or twenty minutes after that.

Int'y 8. Please state, as minutely as you can, all the circumstances of the collision; how the two vessels were sailing; where they were, and what was done by each?

Ans. We were about a half mile to the eastward of Northeast Ledge buoy; the brig was about half a mile to windward; both vessels sailing by the wind on the same tacks. I heard a noise; I looked round and saw this brig was keeping off; when they got so near they could hear me, I hallooed to them, and asked them what they was going to do, if they was going to run me down. They was coming down on to me very fast; I found out they wasn't going to do anything but run me down; I put the helm up; the brig becalmed the boat's sails so she would not fall off; the brig came up so fast she struck us on the quarter; her jib-boom went into our mainsail and keeled her over, and she filled with water; she sunk in about five minutes.

Int'y 9. What noise attracted your attention to the brig, and what first induced you to suppose a collision would occur?

Ans. The noise of the brig going through the water. The brig was keeping off. I did not know whether she would keep off enough to clear me.

Int'y 10. Where is the buoy near the Graves?

Ans. to Int'y 10. On the Northeast Ledge, full three-quarters of a mile from the Graves, and to the eastward of the ledge.

Int'y 11. Where was the brig as regards that buoy when she first kept off?

Ans. To the northward and eastward of the buoy.

Int'y 12. Is there or not any appearance of rocks between the buoy and the Graves? How was it at the time of the collision?

Ans. There is no appearance of rocks at high water. There was none at the time of the collision.

Int'y 13. Which vessel changed her course, if either, before the collision, and how much?

Ans. The Clement changed hers. She kept off three or four points.

Int'y 14. Did you change your course at any time, and, if so, when? Where were you steering for?

Ans. We did not change our course. We were steering for the southern part of the Graves.

Int'y 15. How long had you been steering for that place on that tack?

Ans. Three-quarters of an hour.

Int'y 16. Did you hail the brig before the collision; if so, what reply, if any, was made?

Ans. I did, sir. I didn't hear any reply.

Int'y 17. Did you hear any hail from the brig, and did you reply?

Ans. I did not hear any hail from the brig, and did not reply.

Int'y 18. Before the collision, did you see any persons on board the brig, forward or aft? Where were they, and what were they doing?

Ans. I see them forward and the man at the wheel aft. Those forward appeared to be looking at me; the man at the wheel steering.

Int'y 19. Did you make any attempt to run across the bows of the brig?

Ans. I did not, sir.

Int'y 20. Whether or not could the brig have passed to the stern of your boat when she kept off? if so, how?

Ans. She could, sir, by keeping off a little more.

Int'y 21. After you hailed her, was there time enough for her to have avoided you by luffing?

Ans. There was, sir.

Int'y 22. Whether or not was there room enough to tack the brig between the point of collision and the Graves?

Ans. There was room enough to tack or wear a frigate.

Int'y 23. Where would she have gone if she had done so?

Ans. Stood to the northward and tacked again into the Sound, or she could have tacked and wore round and gone into Lighthouse Channel.

Int'y 24. Who was aboard the Hornet with you? What became of you when she sank?

Ans. The steward, he got on board the brig. I was overboard; he passed me a line over the brig's bow, and they hauled me up.

Int'y 25. (Objected to.) Did you have any conversation with the mate, Hammond, after you got on board the brig? if so, state all he said about the collision.

Ans. I did have a conversation with him then. He said he told the captain he should have to do something pretty soon, or he would be into the boat. I asked him if he heard me hail him, and he said

he did. He asked me if I heard his answer. I told him I did not. He said Well, I didn't suppose you would hear it, she made such a noise—the brig going through the water.

Int'y 26. (Objected to). Did you talk with Morris, the man at the wheel, after you got aboard the brig? If yea, state what he said, if anything, about the course of the brig.

Ans. I did talk with him. He said he put the helm up a few minutes before, by the Captain's order, and should keep it there till he got orders to reverse it, if he run over four pilot-boats.

Int'y 27. How came he to say that? What had you said to him?

Ans. I asked him how he had his helm at the time he run over us.

Int'y 28. Do you know whether he heard your hail?

Ans. He did, sir; he said he did.

Int'y 29. Was anything said aboard the "Clement" about having intended to go up Broad Sound? If so, by whom, and what?

Ans. The Mate said the Captain would have gone up that way, but he was not acquainted with it.

Int'y 30. Which had the wind fairest? Broad Sound or Lighthouse Channel?

Ans. Broad Sound, sir.

Int'y 31. What, if anything, did the Captain of the brig say about the collision?

Ans. He asked me what I was doing under his bow. In answer, I asked him where he was going to, steering the way he was? He said he was going by the buoy down into Lighthouse Channel.

Int'y 32. When the brig kept off, did she make *more* or *less* noise than before?

Ans. More.

Int'y 33. How far off from the Graves did the boat sink? What ranges, if any, did you take to fix the spot?

Ans. About three-quarters of a mile off; Long Island head over Green Island, and Northeast Ledge buoy on the range of Nahant hotel, were the ranges we took.

Int'y 34. Was she carried any distance by the headway of the brig? If so, whether towards or away from the Graves?

Ans. A very short distance, if any, away from the Graves, to the southward and eastward.

Int'y 35. After she sank, what did the brig do?

Ans. Wore round, and went into Lighthouse Channel.

Int'y 36. Did you own any part of the Hornet, or were you paid wages?

Ans. I did not own any of her. I was paid wages, by the month.

Int'y 37. Do you know the value of the Hornet?

Ans. I don't know the exact value. I should think she was worth somewhere between three and four thousand dollars.

Int'y 38. When the brig began to keep off, what was she supposed

by you and the steward to be going to do? and what did you think she was keeping off for?

Ans. We supposed her to be keeping full so as to tack.

GEORGE D. UPHAM.

UNITED STATES OF AMERICA,
District of Massachusetts.

I, Thomas B. Pope, do hereby certify that the reason for taking the foregoing deposition is, and the fact is, that the witness is material to the cause. I further certify that notification, signed by me, before whom the said deposition was taken, to the adverse party, the claimant, to be present at the taking of the same, and to put interrogatories, if he saw fit, was first made and served on him, and that he attended by his proctor, F. C. Loring, Esq.

I further certify, that the said deposition was by me reduced to writing, in the presence of the witness, and that he subscribed the same in my presence.

I further certify, that I am not of counsel or attorney to either of the parties in the cause in and for which the said deposition is taken, or interested in the event of said cause.

In testimony whereof I have hereto set my hand and seal, this tenth day of July, in the year of our Lord eighteen hundred and fifty-four.

THOMAS B. POPE, [SEAL.]
Justice of Peace.

Witness	1 50
Com'r fee,	10 00
	$11 50

Deposition of W. C. Smith.

UNITED STATES OF AMERICA,
District of Massachusetts, ss.

On the seventeenth day of July, A. D. one thousand eight hundred and fifty-four, before me, Elias Merwin, a commissioner duly appointed by the Circuit Court of the United States for the District of Massachusetts, personally appeared W. C. Smith, a witness for the libellants in a certain civil cause of admiralty and maritime jurisdiction, now pending in the District Court of the United States for the District of Massachusetts, wherein Matthew Hunt *et al.* are libellants against the Brig "Clement" and Owner.

And now the said W. C. Smith, having been by me first duly cautioned and sworn to testify the whole truth, did depose and say, in answer to interrogatories propounded by C. P. Curtis, Jr., Esq., proctor for the libellants, as follows:—

Int'y 1. Did you see any persons at work, trying to raise the schooner "Hornet," lately; if so, how recently, and where were you?

Ans. to int'y 1. About three weeks ago, more or less, I went down in the steamer Neptune to Nahant. My attention was called by Mr. Hunt, the pilot, asking me how far I thought the schooner, that was then fast to something, trying to get up, as I supposed, the pilot-boat that was sunk, was from the Graves. After looking at the schooner, and comparing the distance from the Graves, I told him that I supposed it was about one mile; but I do not recollect at this moment whether it was from the outer or inner Graves.

Int'y 2. Did you view the distance between the schooner and the Graves from more than one point of view? If so, how?

Ans. to int'y 2. The steamer was continuing her course, and I probably looked at the schooner four or five minutes. During that time the steamer changed her relative position. The steamer went down to Nahant.

Int'y 3. Who else on board looked for the purpose of forming a judgment, and what was the general conclusion formed?

Ans. to int'y 3. I think Captain Gliddon was there, but I do not remember whether the question was put to him or not.

Int'y 4. How many years have you been to sea?

Ans. to int'y 4. Off and on, at different times, about thirteen years.

W. C. SMITH.

UNITED STATES OF AMERICA,
District of Massachusetts, ss.

I, Elias Merwin, a Commissioner, duly appointed by the Circuit Court of the United States for the District of Massachusetts, do certify that the cause for taking the foregoing deposition is that the evidence of the said witness is material to the cause in the caption of said deposition named; that the time and place for taking the same were agreed upon by the said parties; that on the seventeenth day of July, A. D. eighteen hundred and fifty-four, I was attended by C. P. Curtis, Jr., Esq., proctor of the libellants, by F. C. Loring, Esq., proctor of the respondents, and by the said witness; and the said witness was by me carefully examined and cautioned, and sworn, and the testimony by him given was by me reduced to writing, and thereafter subscribed by the said witness in my presence; and that I am not of counsel or attorney to either of the parties, nor in any way interested in the event of the suit named in the said caption.

E. MERWIN,
U. S. Commissioner.

Witness's fee, .	$1 50
Commissioner's fees,	5 00
	$6 50

Second Deposition of George D. Upham.

UNITED STATES OF AMERICA,
District of Massachusetts, ss.

On this twentieth day of July, A. D. eighteen hundred and fifty-four, before me, Elias Merwin, a Commissioner duly appointed by the Circuit Court of the United States for the District of Massachusetts, personally appeared George D. Upham, boat-keeper of the pilot-boat "Hornet," a witness for the libellants in a certain civil cause of admiralty and maritime jurisdiction now pending in the District Court of the United States for the District of Massachusetts, wherein Matthew Hunt *et al.* are libellants, against the Brig "Clement and owner."

And now the said George D. Upham, having been by me first duly cautioned and sworn, did depose and say, in answer to interrogatories propounded by C. P. Curtis, Jr., proctor of libellants, as follows:—

Int'y 1. Did you go down to or by the place where the "Hornet" sank, after the collision? if yea, how, and why did you go, or how often? how soon after the collision?

Ans. to int'y 1. I did go down in a sail-boat, and in the pilot-boats "Flirt" and "Friend." I went down twice, because I was employed by those pilot-boats as a boat-keeper, and once I went expressly to see whether they were doing anything with the "Hornet" or not. The first time I went was four days after the collision; the second time about ten days after the collision. I have been there three or four times since in the pilot-boat "Friend."

Int'y 2. What indication, if any, was there of where the Hornet lay each time you went?

Ans. to int'y 2. The first time there was not any; I was then in the "Flirt." The next time I went down on purpose to see, and then there was a buoy on her; some one had put a buoy on her. I have seen them at work there three or four times since when I have been down there in the "Friend." Two schooners from Hull had a chain round her and were heaving her up.

Int'y 3. How did the place where that buoy was, or the schooners at work, bear in relation to where the collision occurred?

Ans. to int'y 3. Very near the same place, only a little to the southward, if anything. There was not more than one hundred feet difference, I should think.

Int'y 4. What clothing or other articles, if any, were on board the "Hornet" when she sank, and to whom did they belong?

Ans. to int'y 4. Capt. Hunt had considerable quantity of clothing, gun, and decoys, a double-barrelled gun. Reuben Hunt had all his sea clothes and double-barrelled fowling-piece. Henry Hunt had all his sea clothes there, and also Mr. Josslyn, the pilot. I should think the guns were worth twenty dollars apiece.

Int'y 5. In what direction is the buoy on the outer ledge from the Graves?

Ans. to int'y 5. About northeast.

GEO. D. UPHAM.

UNITED STATES OF AMERICA,
District of Massachusetts, ss.

I, Elias Merwin, a Commissioner duly appointed by the Circuit Court of the United States for the District of Massachusetts, do certify, that the cause for taking the foregoing deposition is, that the evidence of the said witness is material on the trial of the cause named in the said caption; that the time and place for taking the same were agreed upon by the parties; that on the twentieth day of July, A. D. eighteen hundred and fifty-four, I was attended by C. P. Curtis, Jr., Esq., proctor of libellants, by F. C. Loring, Esq., proctor of respondents, and by the said witness; and the said witness was by me carefully examined, and cautioned, and sworn, and the testimony by him given was by me reduced to writing, and thereafter subscribed by the said witness in my presence. And that I am not of counsel or attorney to either of the parties, nor in any way interested in the event of the suit named in the said caption.

ELIAS MERWIN,
U. S. Commissioner.

Witness fees, 1 day,	$1 50
Comm'rs fees,	4 00
	$5 50

Deposition of Henry Brown.

MATTHEW HUNT *et al.*
vs.
THE BRIG "CLEMENT."

DISTRICT COURT OF THE UNITED STATES
for the Circuit and District of Massachusetts.

UNITED STATES OF AMERICA,
District of Massachusetts.

Be it remembered, that on the twenty-fourth day of July, in the year of our Lord eighteen hundred and fifty-four, at my office, in Boston, in said District of Massachusetts, before me, Elias Merwin, a Commissioner in and for the District of Massachusetts to take affidavits and bail in civil causes depending in the Courts of the United States, appointed by the Circuit Court of the United States for the First Circuit, under the acts of Congress in such case made and provided, personally appeared Henry Brown, of said Boston, a witness of sound mind and lawful age, a witness for the libellants in

a certain civil suit depending in the District Court of the United States in and for the Circuit and District of Massachusetts, wherein Matthew Hunt *& al.* are libellants, *vs.* The Brig "Clement." And the said Henry Brown, being by me first carefully examined, and cautioned and sworn to testify the whole truth, did depose and say as follows, in answer to interrogatories propounded by C. P. Curtis, Jr., Esq., proctor of libellants:—

Int'y 1. What is your name, age, and business, and how long have you been so engaged?

Ans. to int'y 1. My name is Henry Brown; my age is thirty-two years; I am a mariner, and have been twenty-one years.

Int'y 2. Were you on board the schooner "Hornet" when she was run down by the brig "Clement?" if so, in what capacity, and who else was on board?

Ans. to int'y 2. I was on board as cook and steward, and George Upham boat-keeper.

Int'y 3. Where was the "Hornet" going, and where had she been? What time of day was it when the accident happened? How do you fix the time?

Ans. to int'y 3. She was going to Boston. She had been in the bay putting the pilots on board vessels. She had put them all on board and was going back. It was between twelve and one o'clock when the accident happened. It was some time after I got through washing the dinner dishes. I was blacking the stove. We dine at twelve o'clock.

Int'y 4. What first attracted your attention to the brig, and where had you been up to that time?

Ans. to int'y 4. I heard the boat-keeper hallooing out to the brig. I had been below; he sung out to the brig and said, "Where in hell are you coming to! or do you mean to run over me?" I came up out of the scuttle and stood on the steps. I see the brig was coming pretty rapid through the water, and I thought it was to give her a good full to go about. Then I went below. I did not know anything more of her till I felt both vessels come together.

Int'y 5. Did you hear any hail from the brig?

Ans. to int'y 5. No, sir.

Int'y 6. Did you see anybody on board the brig before you came together? if so, where?

Ans. to int'y 6. I did not.

Int'y 7. How long did you stay up when you looked at her?

Ans. to int'y 7. I looked at her and went right below again.

Int'y 8. Where did the Hornet sink?

Ans. to int'y 8. She sunk about half a mile from the northeast ledge of the Graves.

Int'y 9. How did the buoy on the ledge bear from you when the brig hit the boat?

Ans. to int'y 9. It bore right through the big house on Nahant head.

Int'y 80. Did you own any part of the Hornet, or were you paid wages?

Ans. to int'y 10. I was paid by the month.

Int'y 11. Had you seen the brig before that morning, and where, and at what time?

Ans. to int'y 11. We had seen her early in the morning down off half-way rock. The pilot spoke her, and she would not take a pilot.

his
HENRY + BROWN.
mark.

Attest: E. MERWIN.

Witness fees, 1 day,	$1 50
Commissioner's fees,	5 00
	$6 50

UNITED STATES OF AMERICA,
District of Massachusetts.

I, Elias Merwin, a Commissioner in and for the District of Massachusetts to take affidavits and bail in civil causes depending in the Courts of the United States, appointed by the Circuit Court of the United States for the First Circuit, under the acts of Congress in such case made and provided, do hereby certify, that the reason for taking the foregoing deposition is, and the fact is, that the evidence of said witness is material on the trial of the cause for and in which said deposition is taken; that the time and place for taking the same were agreed upon by the parties, and that by their respective proctors they did attend the taking of the same.

I further certify that said deposition was by me reduced to writing in the presence of the witness, and that he subscribed the same in my presence, and I have retained it for the purpose of forwarding it under my own hand to the Court for which it was taken, with this certificate of the reason of its being taken.

I further certify that I am not of counsel, or attorney, to either of the parties in the cause, in and for which the said deposition is taken, or interested in the event of said cause.

In testimony whereof I have hereto set my hand and seal this twenty-fourth day of July, in the year of our Lord eighteen hundred and fifty-four.

E. MERWIN, [SEAL.]
Commissioner to take affidavits and bail of the Circuit Court of U. S., Mass. District.

Deposition of John Mitchell.

MATTHEW HUNT
vs.
THE BRIG "CLEMENT."

CIRCUIT COURT OF THE UNITED STATES
for the First Circuit.

UNITED STATES OF AMERICA,
District of Massachusetts.

Be it remembered that on the twenty-third day of February, in the year of our Lord eighteen hundred and fifty-five, at Boston, in said District of Massachusetts, before me, Edward G. Loring, a Commissioner in and for the District of Massachusetts to take affidavits and bail in civil causes depending in the Courts of the United States, appointed by the Circuit Court of the United States for the First Circuit, under the acts of Congress in such case made and provided, personally appeared John Mitchell, a witness of sound mind and lawful age, a witness for the libellants, in a certain civil suit depending in the Circuit Court of the United States in and for the First Circuit and District of Massachusetts, wherein Matthew Hunt is libellant and the brig "Clement" is respondent, and the said being by me first carefully examined and cautioned and sworn to testify the whole truth, did depose and say as follows, viz: —

I, John Mitchell, of Hull, in the State of Massachusetts, master mariner, of lawful age to testify, on oath depose and say in answer to interrogatories by C. P. Curtis, Jr., counsel for the libellants:—

1. What is your age; where do you live; and what has been your business for the last twenty years?

Ans. I am sixty-five years of age; I live in Hull; my business for the last twenty years has been principally coasting, and assisting and raising from the bottom sunken vessels, and piloting vessels in thick weather in Boston Harbor.

2. Did you undertake to raise the schooner "Hornet" last June? if yea, what did you do about it?

Ans. I did undertake to raise the schooner "Hornet" last June. Three or four days after she sank I went there and tried sweeping the bottom with the grapplings to find her. Three or four men from Hull followed me out, and they swept also and found her. After they found her, I asked them if they wanted assistance to get her up? They said, no, they did not; that is all that I did to her at that time. After that, they got two schooners to raise her up, and I went to them with my schooner and asked them if they wanted any assistance; they said if they wanted me, they would call me. They were then over the "Hornet" and made fast to her. They tried for a week to raise her, and some of their chains parted, and they found her heavier than they expected, and they left her.

3. How long have you been acquainted with Boston harbor, and how well are you acquainted with it, and its rocks and currents?

Ans. I have been acquainted with Boston harbor, steady backwards and forwards, this forty years. I think I am as well acquainted with it as any man at present living, and going up and down this harbor. I am acquainted with all the rocks and currents and flats in Boston harbor and its bays, and in all parts; I have been so many years going about them.

4. How far off from the main body of the Graves was the place where the Hornet lay?

Ans. About a mile—it may be a little more or less—but I should judge about a mile from the middle of the Graves—that is, the main part.

5. How far off from the buoy on the northeast ledge was she, and in what direction from there?

Ans. She was over a mile due east, a little southerly from the buoy on the northeast of the ledge; the buoy is itself northeast from the ledge, and the Hornet lies east, a little southerly from the buoy.

6. How much would her position on the bottom be altered by currents where she went down?

Ans. Not an atom, sir; in fifteen seconds she would go to bottom, and there she would lie; so small a boat, with, I judge, fifteen or sixteen tons in her of ballast.

7. Was there or not room enough between there and the Graves for a brig to tack or wear?

Ans. Yes, sir, and for a clipper ship to wear or go in stays—the biggest clipper ship in the State.

8. Is there any buoy between the northeast ledge and the body of the Graves?

Ans. No, sir.

9. For how many years have you followed the seas?

Ans. Since I was sixteen years old.

JOHN MITCHELL.

UNITED STATES OF AMERICA,
District of Massachusetts.

I, Edward G. Loring, a Commissioner in and for the District of Massachusetts, to take affidavits and bail in civil causes depending in the Courts of the United States, appointed by the Circuit Court of the United States for the First Circuit, under the acts of Congress in such case made and provided, do hereby certify that the reason for taking the foregoing deposition is, and the fact is, the agreement of parties.

I further certify that notification signed by me, the Commissioner aforesaid, before whom the said deposition was taken, to the adverse party to be present at the taking of the same, and to put interrogatories if he saw fit, was first made and served on them, and said adverse party did attend.

I further certify that the said deposition was by me reduced to writing in the presence of the witness, and that he subscribed the same in my presence, and that I have retained it for the purpose of forwarding it under my own hand to the Court for which it was taken, with this certificate of the reason of its being taken.

I further certify that I am not of counsel, or attorney, to either of the parties in the cause, in and for which the said deposition is taken, or interested in the event of said cause. In testimony whereof I have hereto set my hand and seal this 23d day of February, in the year of our Lord 1855.

EDW. G. LORING,
Commissioner to take affidavits and bail of the Circuit Court of U. S., Mass. District.

Comm'r's fee $5 00.

Depositions taken for Respondents.

MATTHEW HUNT *& al.*
vs.
THE BRIG CLEMENT.

DISTRICT COURT OF THE UNITED STATES
for the District of Massachusetts.

UNITED STATES OF AMERICA,
District of Massachusetts.

Be it remembered, that on the nineteenth day of June, in the year of our Lord eighteen hundred and fifty-four, at Boston, in said District of Massachusetts, before me, Elias Merwin, a Commissioner in and for the District of Massachusetts, to take affidavits and bail in civil causes depending in the Courts of the United States, appointed by the Circuit Court of the United States for the First Circuit, under the acts of Congress in such case made and provided, personally appeared John Morris and Luther Hammond, witnesses, of sound mind and lawful age, witnesses for the respondents in a certain civil suit depending in the District Court of the United States in and for the Circuit and District of Massachusetts, wherein Matthew Hunt *& al.* are lib'ts *vs.* the Brig "Clement," and the said John Morris being by me first carefully examined, and cautioned and sworn to testify the whole truth, did depose and say as follows, in answer to interrogatories propounded by F. C. Loring, Esq., proctor for the respondents:—

Deposition of John Morris.

Int'y 1. Were you on board the brig Clement on the tenth of June, when she came in collision with the pilot-boat Hornet?

Ans. to int'y 1. I was, as one of the seamen. I was at the helm at the time the collision occurred. The vessel was at the time heading south-southwest, and the wind was about west by north,

or west-northwest. The wind was baffling that morning. We had all our sails set, but the studding-sails. We were sailing at the time about six or seven knots an hour.

Int'y 2. Where did you first see the Hornet, and how did she then bear from you?

Ans. to int'y 2. She was under our beam when I first saw her that afternoon. We had seen her before in the morning. She was then about half a mile off, and was steering, I suppose, about southwest. I could not tell exactly.

Int'y 3. How far off the Graves were you at the time?

Ans. to int'y 3. I suppose about eighty or ninety yards, it might be a hundred at the time she came in contact with us.

Int'y 4. Whether or not did the Hornet attempt to cross your bow?

Ans. to int'y 4. (The proctor for libellants objects to this int'y as leading). She was going across our bow.

Int'y 5. Did or did not a collision occur? If so, describe it.

Ans. to int'y 5. The Clement struck the Hornet abaft her main rigging. The next time I saw the Hornet again her sails were full, and I thought she was coming up. I was aft, and did not see her stern. I only saw her bow, and that was out of water.

Int'y 6. Did you or not alter the wheel before the collision; if so, how much, and by whose order?

Ans. to int'y 6. I altered the wheel by the captain's orders just before she struck her. I put the wheel hard down.

Int'y 7. If the wheel had not been altered, whether or not should you have struck the Hornet; and if so, how and where?

Ans. to int'y 7. We should have gone over her if the wheel had not been put down. I cannot tell where we should have struck her.

Int'y 8. Whether or not could you have gone nearer to the Graves without danger of running ashore? (The proctor for lib'ts object to this int'y).

Ans. to int'y 8. I don't know. I don't know how far the water runs out there. I would not go any nearer myself.

Int'y 9. Did you see any one on board the boat? If yea, did he hail you, and what did he say? Was he hailed from the brig, and what was said?

Ans. to int'y 9. I saw a man at the wheel, and a man looking out through the hatch. The man at the wheel sung out to me to put the wheel down, but I was not going to do it without the captain's orders. I heard no hail from the brig.

Int'y 10. Whether or not did you afterwards see the man at her wheel on board of the Clement? Did you or not have any talk with him about the collision? If yea, what did he say?

(The proctor for lib'ts objects to this interrogatory.)

Ans. to int'y 10. I saw him afterwards on board the Clement, but never had any conversation with him, only we were talking about the bad place the Hornet went down in.

Int'y 11. Did he or not give any reason for steering as he did?

Ans to int'y 11. He said he wanted to go through a gut to the windward of the light.

And in answer to the following *cross interrogatories* by C. P. Curtis, Jr., proctor for libellants, the said deponent further saith:—

1 + int'y. You and the pilot-boat were sailing along towards the Graves, were you not?

Ans. to 1 + int'y. We were sailing along past the Graves.

2 + int'y. You were both on the same tack, and by the wind, were you not?

Ans. to 2 + int'y. We were about two points off from the wind on the same tack.

3 + int'y. You had been sailing by the wind that forenoon, had you not?

Ans. to 3 + int'y. Yes.

4 + int'y. You had not quite come up to the Graves, had you?

Ans. to 4 + int'y. We were past the buoy; that is, on the end of them.

5 + int'y. Just before the collision, the pilot-boat was under your lee bow, was she not?

Ans. to 5 + int'y. Yes.

6 + int'y. When the man on the Hornet called to you to put the wheel down, you had the wheel up, had you not?

Ans. to 6 + int'y. I had the wheel right amidships.

7 + int'y. The pilot-boat was close hauled, was she not?

Ans. to 7 + int'y. Yes, sir.

8 + int'y. Did not the captain order you to put the wheel up just before the man on the pilot-boat hallooed to you to put it down?

Ans. to 8 + int'y. No, sir. His orders were to keep her off by the land.

9 + int'y. Is the man at the wheel of the Hornet present here now?

Ans. to 9 + int'y. He is.

10 + int'y. You *did* have some talk with him on board the brig, did not you?

Ans. to 10 + int'y. No more than talk of her going down in a hard place, and steering through the gut, and the like of that.

11 + int'y. Did not he tell you he was steering through a gut near the Graves?

Ans. to 11 + int'y. Yes, sir.

12 + int'y. Your brig was steering about south-southwest at the time of the collision, was not she?

Ans. to 12 + int'y. Yes, sir.

13 + int'y. How many points did she luff when you put the helm down, before she struck the Hornet?

Ans. to 13 + int'y. I suppose she came up about a point, or a point and a half.

14 + int'y. Are the captain and mate of the brig Clement both present here now?

Ans. to 14 + int'y. Yes, sir.

15 + int'y. Have you been paid off for this voyage?

Ans. to 15 + int'y. Yes, sir.

16 + int'y. Are you going in her again?

Ans. to 16 + int'y. No, sir, I don't believe I shall go in her again.

17 + int'y. In coming up to the Graves, both vessels were sailing about southwest by west, were you not?

Ans. to 17 + int'y. Our vessel would not lay any higher than southwest to the wind.

18 + int'y. The headway of the brig was not stopped till she came into the wind; was it after the collision?

Ans. to 18 + int'y. No, sir.

19 + int'y. How far off from the Graves is the buoy that you speak of?

Ans. to 19 + int'y. I can't say how far, exactly.

20 + int'y. Are you familiar with Boston Harbor and those ledges, &c.?

Ans. to 20 + int'y. Yes, sir.

21 + int'y. Is that buoy on the Graves?

Ans. to 21 + int'y. I should think it was, or on the stones that belong to the Graves.

22 + int'y. What orders had you received as to steering before the collision occurred?

Ans. to 22 + int'y. I had received no orders, except to steer by the land.

23 + int'y. You were guiding yourself by the pilot-boat somewhat, were you not?

Ans. to 23 + int'y. No, sir; she was going a different course from us, to windward of us.

his
JOHN + MORRIS.
mark.

Attest, E. MERWIN.

Deposition of Luther Hammond.

June 19, 1854. And now the said Luther Hammond having been by me first duly examined and cautioned and sworn to testify the whole truth, did depose and say in answer to interrogatories propounded by F. C. Loring, Esq., proctor for respondents, as follows:—

Int'y 1. Were you on board the Clement when a collision occurred between her and the Hornet, June 10th; if yea, in what capacity? please to state the course of the wind, how you were steering, how fast going, whereabouts you were as to the Graves, and then describe the circumstance of the collision.

Ans. to int'y 1. I was on board of the Clement as first officer;

I had not seen the compass for some time previous; the wind was so that we were going a couple of points free. We were leeward of the Graves; I had been clearing away my anchors just before that; I stepped on the deck-load and saw a pilot-boat coming along, and I hailed him to keep him off. He made some remark back, but I did not understand what he said; he had a tiller-rope round his tiller, as nigh as I could judge, and was walking up and down the standing-room; he never altered his helm, only a few seconds before she struck. Our jib-boom took his rigging and tipped him over; she then came round under our bow, and they carried away our foreyard and top-mast studding-sail boom; then this yard began to crack, and I hallooed to them to haul the man in who was at the helm of the Hornet; the pilot-boat sunk.

Int'y 2. What part of the boat's rigging did your jib-boom catch in?

Ans. to int'y 2. The main rigging.

Int'y 3. Did or not the Clement strike the hull of the boat, or do any damage to it?

Ans. to int'y 3. I did not see as she did; I was trying to take care of this man.

Int'y 4. How many yards were you from the Graves, as well as you can judge, when the collision occurred?

Ans. to int'y 4. I should think from ninety to a hundred yards.

Int'y 5. Were you or not steering the usual course of vessels bound for the Lighthouse Channel?

Ans. to int'y 5. We were.

Int'y 6. Was or not the wheel of the Clement altered first before the collision? if yea, how and by whose orders?

(The proctor for libt's objects to this int'y.)

Ans. to int'y 6. I was so far forward I didn't hear it, if there was any alteration.

Int'y 7. If the wheel of the Clement had been put down or up, whether or not would a collision have occurred in your opinion, and if so how would it have occurred, and whether with more or less damage to the pilot-boat?

Ans. to int'y 7. If the wheel had been put up a collision would have occurred; we should probably have gone right over her, so that the men would have lost their lives; if the helm had been put down we should have sunk the boat.

Int'y 8. Did or did not the boat attempt to cross your bow?

(The proctor for lib'ts objects to this int'y.)

Ans. to int'y 8. He did not alter his course any, as I see.

Int'y 9. Was she or not running across your bow when she was struck?

(The proctor for lib'ts objects to this int'y.)

Ans. to int'y 9. Yes, sir.

Int'y 10. How did she alter her course?

Ans. to int'y 10. He shoved his tiller hard-up, just before we

struck, five or six yards off—that is, his stern was that distance from our bows.

Int'y 11. To what cause do you attribute the collision?

(The proctor for lib'ts objects to this int'y.)

Ans. to int'y 11. I think he did not calculate to alter his course for us.

Int'y 12. How long before the collision did you hail the boat; how far off was she then?

Ans. to int'y 12. I cannot tell the exact time; she was about forty yards off.

Int'y 13. Was or was not your hail heard?

Ans. to int'y 13. They made some remark back.

Int'y 14. Was there or not time then to alter the course of the boat so as to avoid a collision?

Ans. to int'y 14. Yes, sir.

Int'y 15. What hail did you make?

Ans. to int'y 15. I told them to keep off.

Int'y 16. Whether or not did you see the man at the helm of the boat on board the Clement; if so, did you or not hear him say anything about the collision; if yea, what was it?

(The proctor for lib'ts objects to this int'y.)

Ans. to int'y 16. I did see him on board the Clement; I said to him it was a bad thing for him, and he said it was not, if I told the truth; this was when he first came on board.

Int'y 17. How long have you followed the seas, and whether or not are you well acquainted and familiar with Boston Harbor and the entrance to it?

Ans. to int'y 17. I have followed the seas sixteen years next August; I have been often in Boston Harbor; I am not well acquainted with it.

Int'y 18. Whether or not would it have been safe and prudent to have sailed nearer to the Graves than the Clement sailed?

Ans. to int'y 18. I should think not; I thought we were going rather near.

And in answer to the following cross-interrogatories propounded by C. P. Curtis, Jr., Esq., proctor of libellants, the said deponent further saith:—

1 + int'y. Did not the pilot-boat speak your vessel early that morning?

Ans. to 1 + int'y. She spoke us after eight o'clock A. M.

2 + int'y. How long had you been engaged about your anchors before the collision?

Ans. to 2 + int'y. Probably twenty minutes to half an hour.

3 + int'y. When you looked over the bow the pilot-boat appeared to be going across your bows, did she not?

Ans. to 3 + int'y. Yes, sir.

4 + int'y. If the Clement had luffed a little when you hailed the Hornet, would they not have gone clear?

Ans. to 4 + int'y. We should probably have gone into the ledges there somewhere; if we had luffed only one point we would not have cleared the boat.

5 + int'y. How many points to luff would have cleared her?

Ans. to 5 + int'y. If we could have luffed three points, and had sea-room, we could have cleared her.

6 + int'y. How many points luff would have carried you on to the ledges?

Ans. to 6 + int'y. A point and a half.

7 + int'y. Does not the pilot-boat sail faster than the Clement by the wind?

Ans. to 7 + int'y. I don't know her speed.

8 + int'y. Just before you struck the Hornet, did not the water make some noise under the bows of the brig?

Ans. to 8 + int'y. Yes, sir.

9 + int'y. From what port had you arrived?

Ans. to 9 + int'y. Charleston, S. C.

10. + int'y. Were the spars or rigging which were floating adrift or fast to the wreck, or don't you know?

Ans. to 10 + int'y. I cannot tell.

LUTHER HAMMOND.

UNITED STATES OF AMERICA,
District of Massachusetts.

I, Elias Merwin, a Commissioner in and for the District of Massachusetts to take affidavits and bail in civil causes depending in the Courts of the United States, appointed by the Circuit Court of the United States for the First Circuit, under the acts of Congress in such case made and provided, do hereby certify that the reason for taking the foregoing deposition is that the testimony of the said witnesses is material on the trial of the cause in the caption of said deposition named; I further certify, that on the said nineteenth day of June, the said libellants did attend by C. P. Curtis, Jr., their proctor, and the said respondents did attend by F. C. Loring, their proctor.

I further certify, that the said deposition was by me reduced to writing in the presence of the witness, and that he subscribed the same in my presence, and that I have retained it for the purpose of forwarding it under my own hand to the Court for which it was taken, with this certificate of the reason of its being taken.

I further certify that I am not of counsel or attorney to either of the parties in the cause in and for which the said deposition is taken, or interested in the event of said cause.

In testimony whereof, I have hereto set my hand and seal this nineteenth day of June, in the year of our Lord eighteen hundred and fifty-four.

ELIAS MERWIN,
Comm'r to take affidavits and bail in the Circuit Court of U. S., Mass. District.

Deposition of Joseph Hawes.

MATTHEW HUNT *et al.*
vs.
THE BRIG CLEMENT.

DISTRICT COURT OF THE UNITED STATES
for the District of Massachusetts.

UNITED STATES OF AMERICA,
District of Massachusetts.

Be it remembered, that on the twenty-seventh day of June, in the year of our Lord eighteen hundred and fifty-four, at Boston, in said District of Massachusetts, before me, Elias Merwin, a Commissioner in and for the District of Massachusetts, to take affidavits and bail in civil causes depending in the Courts of the United States for the First Circuit, under the acts of Congress in such case made and provided, personally appeared Joseph Hawes, a witness of sound mind and lawful age, a witness for the respondents in a certain civil suit depending in the District Court of the United States in and for the Circuit and District of Massachusetts, wherein Matthew Hunt *& al.* are libellants, *vs.* The Brig Clement; and the said Joseph Hawes, being by me first carefully examined, and cautioned and sworn to testify the whole truth, did depose and say as follows, in answer to interrogatories propounded by F. C. Loring, Esq., proctor of respondents:—

Deposition of Joseph Hawes.

Int'y 1. State your name, age, residence, and occupation.

Ans. to int'y 1. My name is Joseph Hawes, I reside in Chatham, Mass., and am a master mariner. I have been master four years.

Int'y 2. How long have you followed the seas, and in what capacity?

Ans. to int'y 2. I have followed the seas for twenty years, in all capacities, from cook and steward, mate, second mate, and captain.

Int'y 3. Were you master of the brig Clement on the tenth day of June, at the time she came in contact with the Hornet?

Ans to int'y 3. I was.

Int'y 4. Please to state at what time of day the collision occurred, how the wind was, how you were steering before it occurred.

Ans. to int'y 4. The collision occurred not far from two o'clock, P. M. The wind was baffling, but not far from west-northwest. There was no course given to the man at the wheel; he was steering by the land. I could not tell how she was heading at the time.

Int'y 5. Were you standing in for Broad Sound or Lighthouse Channel? How nigh the wind were you sailing?

Ans. to int'y 5. We were standing in towards the Lighthouse

Channel. I should judge we were about a point or a point and a half off from the wind. I could not say positively.

Int'y 6. How near the Graves were you, and how did they bear from you?

Ans. to int'y 6. I could not tell the distance. I should judge we were from eighty to ninety yards off. They were on our starboard beam.

Int'y 7. Whereabouts was the Hornet when you first saw, and how long was this before the collision? In what direction was she from you, how far off, and how was she sailing, faster or slower than the brig, and what course in reference to the brig?

Ans. to int'y 7. When I first saw the Hornet, she was on the lee quarter. I should judge it was twenty-five minutes or somewhere thereabouts before the collision. I could not tell positive. She rather outsailed us. At the time I saw, I should judge she was half a mile off. She was sailing parallel with us.

Int'y 8. Whether or not was the course of the Hornet such as, if not altered, would bring her across the course of the brig?

Ans. to int'y 8. I should think it would.

Int'y 9. Whether or not was she hailed from the brig? if yea, what was said and by whom?

Ans. to int'y 9. I heard a hail, or a noise from forward, but I could not tell what he alluded to, what it was, or anything about it.

Int'y 10. Did you hear any hail from the boat?

Ans. to int'y 10. I did not.

Int'y 11. Please to state whether a collision occurred, and if so, how?

Ans. to int'y 11. A collision occurred by the boat standing across our bow; that was the cause of it.

Int'y 12. Whether or not was the helm of the brig ordered up by you, or was it put up at any time after you saw the boat?

Ans. to int'y 12. It was not. It was altered, but not put up.

Int'y 13. Whether or not was it ordered down by you, or was it put down at or before the time of the collision, and why?

Ans. to int'y 13. It was put down a minute or two previous to the collision to avoid running over the boat.

Int'y 14. Did you order it down? If it had not been put down, what would have occurred?

Ans. to int'y 14. I did order it down. If the helm had not been put down, I should judge, by the appearance of things, we would have gone over the boat.

Int'y 15. What orders had the man at the wheel before he was directed to put the helm down?

Ans. to int'y 15. He had orders some time previous to that to steer along by the land.

Int'y 16. Were you forward at the time of the collision, so as to see how it occurred? if yea, describe it.

Ans. to int'y 16. I was not forward. I was on the quarter.

Int'y 17. Whether or not at any time were you standing in for Broad Sound?

Ans. to int'y 17. Not standing in for the sound. No, I was not.

Int'y 18. Whether or not, when the boat was so nigh as to make a collision probable, could you do anything to avoid it?

Ans. to int'y 18. I could not.

Int'y 19. Whether or not had you passed the buoy on the end of the Graves at the time of the collision?

Ans. to int'y 19. I think we were near abreast of it.

Int'y 20. Whether or not could the boat have avoided a collision; and if so, how?

Ans. to int'y 20. The boat could have avoided the collision by keeping off. There was plenty of room to keep off when he was hailed.

Int'y 21. Whether or not could you have gone nearer to the Graves; if not, why not?

Ans. to int'y 21. I was very near the Graves, as near as I thought prudent to go.

And in answer to *cross interrogatories* propounded by C. P. Curtis, Jr., Esq., proctor of the libellants, the said deponent further saith:—

1 + int'y. Are you going again in the brig Clement?

Ans. to 1 + int'y. I do not know positively yet.

2 + int'y. In what capacity, if you go?

Ans. to 2 + int'y. As mate.

3 + int'y. How long is your vessel? state as near as you can.

Ans. to 3 + int'y. About ninety feet, I think; not far from ninety.

4 + int'y. Were you within three lengths of the Graves at the time of the collision?

Ans. to 4 + int'y. I do not know as she was. I don't know whether she was or not.

5 + int'y. Were you not, at the time when you saw the Hornet, where you could have gone either into Broad Sound or Lighthouse Channel, if you had known the way?

Ans. to 5 + int'y. I could not have got into Broad Sound; I couldn't fetch.

6 + int'y. Did you know the way and navigation up Broad Sound?

Ans. to 6 + int'y. I am not very well acquainted with Broad Sound, as some is. I have been in there with a vessel, without a pilot, at high water.

7 + int'y. When you first saw the Hornet, you had not reached up to the Graves, had you?

Ans. to 7 + int'y. Yes, sir, pretty handy to them. We had got on to a part of them; we were pretty handy to the north part of the Graves.

8 + int'y. How far off is the north part from the main body? Where is the buoy you spoke of?

Ans. to 8 + int'y. I do not know the distance of the north part from the main body; probably twenty-five yards. The buoy is to the eastward of the Graves, to the eastward of the main body, between these and the northern part.

9 + int'y. How much breeze was there, and how fast were you sailing? What sail had you on?

Ans. to 9 + int'y. We had everything set except studding-sails. I should judge we were going five and a half or six knots. We were sharp up in the wind.

10 + int'y. Hadn't you been beating into the bay that morning from Halfway Rock, or thereabouts?

Ans. to 10 + int'y. I passed the Halfway Rock. I had been coming down from Cape Ann by the wind.

11 + int'y. Where did you tack at twelve o'clock?

Ans. to 11 + int'y. A short distance off from Cape Ann.

12 + int'y. When you reached up as near the Graves as you thought best, you ordered the man at the wheel to steer by the land, did you not?

Ans. to 12 + int'y. I ordered the man to steer by the land. I can't say where it was.

13 + int'y. When you got into Lighthouse Channel, did you come to anchor?

Ans. to 13 + int'y. I did.

14 + int'y. Did you get under way again, and when?

Ans. to 14 + int'y. I got under way that evening at slack water, not far from six o'clock.

15 + int'y. Didn't the boat-keeper of the Hornet pilot you up?

Ans. to 15 + int'y. He did.

16 + int'y. Didn't you request him not to charge you pilotage?

Ans. to 16 + int'y. I did. I told him I should not pay him anything. He was anxious to get up, and offered his services to take the vessel up.

17 + int'y. Was the sail between you and the Hornet so that you could not see her when you were going a couple of points off the wind by the land just before the collision?

Ans. to 17 + int'y. The sail was so I couldn't discern anything to the leeward very well.

18 + int'y. Does not your vessel and all vessels sail faster a little free than by the wind?

Ans. to 18 + int'y. They do as a general thing.

19 + int'y. The headway of the brig was not stopped immediately by the Hornet, was it?

Ans. to 19 + int'y. No, it was not immediately.

20 + int'y. Did yon not luff up, and finally wear round?

Ans. to 20 + int'y. We did. The sails got aback at the time of the collision.

Direct examination resumed.

1 Dir. int'y res'd. Can you mark on this chart the position of the brig and boat when you first saw her? if yea, do so.

Ans. to 1 dir. int'y res'd. The scale is so small that I cannot do it.

2 Dir. int'y res'd. Why do you go as mate and not as master of the Clement?

Ans. to 2 dir. int'y res'd. The Clement doesn't belong to me. Capt. Mayo is going as master, he is the owner of her.

3 Dir. int'y res'd. What damage was done to the brig by the collision, and what was the cost of repairs?

Ans. to 3 dir. int'y res'd. The fore-yard was carried away, topmast studding-sail boom, foretop-gallant stay, and the foretop-gallant mast was cracked some, and some other damages. The cost of repairs was, probably, sixty-five dollars.

4 Dir. int'y res'd. When you ordered the man to steer by the land, what land did you mean?

Ans. to 4 dir. int'y res'd. The land near the lighthouse.

5 Dir. int'y res'd. Was that or not about southwest?

Ans. to 5 dir. int'y res'd. Southwest by south; I should think not far from that, or south-southwest.

Cross examination resumed.

1 ++ int'y. How near the wheel were you standing just before the collision?

Ans. to 1 ++ int'y. Some feet off, probably six, eight, or ten feet; I was on the quarter.

JOSEPH HAWES.

UNITED STATES OF AMERICA,
District of Massachusetts.

I, Elias Merwin, a Commissioner in and for the District of Massachusetts to take affidavits and bail in civil causes depending in the Courts of the United States, appointed by the Circuit Court of the United States for the First Circuit, under the acts of Congress in such case made and provided, do hereby certify that the reason for taking the foregoing deposition is, and the fact is, that the testimony of the said witness is material on the trial of cause for and in which said deposition is taken; that the time and place of taking the said deposition were agreed upon by the parties, and that on the said twenty-seventh day of June, they did attend, by their respective proctors, the taking of the same.

I further certify, that the said deposition was by me reduced to writing in the presence of the witness, and that he subscribed the same in my presence, and that I have retained it for the purpose of

forwarding it under my own hand to the Court for which it was taken, with this certificate of the reason of its being taken.

I further certify that I am not of counsel or attorney to either of the parties in the cause in and for which the said deposition is taken, or interested in the event of said cause.

In testimony whereof I have hereto set my hand and seal, this twenty-seventh day of June, in the year of our Lord eighteen hundred and fifty-four.

ELIAS MERWIN, [SEAL.]
Commissioner to take affidavits and bail of the Circuit Court of U. S., Mass. District.

Depositions of George G. Beal and Alexander F. Harrill.

MATTHEW HUNT *et al.*
vs.
THE BRIG "CLEMENT."

DISTRICT COURT OF THE UNITED STATES
for the District of Massachusetts.

UNITED STATES OF AMERICA,
District of Massachusetts.

Be it remembered that on the twentieth day of June, in the year of our Lord eighteen hundred and fifty-four, at Boston, in said District of Massachusetts, before me, Elias Merwin, a commissioner in and for the district of Massachusetts, to take affidavits and bail in civil causes depending in the Courts of the United States, appointed by the Circuit Court of the United States for the First Circuit, under the acts of Congress in such cases made and provided, personally appeared George G. Beal and Alexander F. Harrill, witnesses, of sound mind and lawful age, witnesses for the respondents in a certain suit depending in the District Court of the United States, in and for the Circuit and District of Massachusetts, wherein Matthew Hunt *et al.* are libellants *vs.* The Brig "Clement;" and the said George B. Beal, being by me first carefully examined and sworn to testify the whole truth, did depose and say as follows, in answer to interrogatories propounded by F. C. Loring, Esq., proctor for the respondents:—

Int'y 1. Please state your age, residence, and occupation; for how many years you have followed the seas, and in what capacity?

Ans. to int'y 1. My age is nearly thirty-three years. I reside in York, Maine. I follow the seas, and have ever since I was fourteen years of age. I have been mate of small vessels. I have never been master.

Int'y. 2. Are you or not well acquainted with the management of vessels? Have you or not frequently sailed in and out of Boston Harbor?

Ans. to int'y 2. I have sailed in and out of Boston Harbor quite a number of times. I am acquainted with the management of vessels.

Int'y 3. Were you on board the brig "Clement", on the tenth day of June last, at the time when a collision occurred between her and a pilot-boat? If yea, whereabouts in the vessel were you at the time?

Ans. to int'y 3. I was aboard the brig at the time, and standing about midships.

Int'y 4. Within an hour before that time what course was the brig standing? How fast was she sailing, and how long before the collision did you see the "Hornet?"

Ans. to int'y 4. I could not tell the exact course the brig was steering. I had not looked at the compass for some time before that. I could not tell how fast she was going; there was no log thrown. It was a short time before the collision that I saw "Hornet," perhaps half an hour. I would not say certain that it was as long as that.

Int'y 5. When you first saw the "Hornet," what course was she steering, the same with you, or otherwise?

Ans. to int'y 5. She was running pretty near the same course that we were; a little nearer the wind than we were.

Int'y 6. Did you observe which was sailing faster?

Ans. to int'y 6. I did not. I did not pay much attention to the boat.

Int'y 7. Did a collision occur? If so, how did it happen? Describe it particularly.

Ans. to int'y 7. The pilot-boat was standing under our lee bow, to the leeward of us. We were standing along towards Lighthouse Channel. She came up to leeward of us, right under our lee bow, and I didn't see exactly when we first struck her. Our foresail was down, which prevented my seeing. I can't say whether our vessel struck her hull, or how, exactly. After she struck, I went forward and saw the boat under our bow, and was then with the mate trying to haul one of the men up with a rope. Then after that, she swung round on to our weather-bow and righted. After she righted she caught her spring-stay against our foreyard, and carried away our topmast studding-sail boom.

Int'y 8. To what cause do you attribute the collision?

(The proctor for libellants objects to this int'y.)

Ans. to int'y 8. The carelessness of the boat-keeper.

Int'y 9. Whether or not did the boat attempt to run across your bow?

(The proctor for libellant objects to this int'y.)

Ans. to int'y 9. I should think he did, from appearances.

Int'y 10. Whether or not did she run across your bows?

Ans. to int'y 10. She did not run across it, because she run against us; she was so near to us that she did not get a chance.

Int'y 11. Whether or not could anything have been done on board the brig to prevent a collision; if yea, what?

Ans. to int'y 11. I don't see as there could have been anything done, unless to run the brig ashore.

Int'y 12. How far were you from the Graves at the time of the collision, and how did they bear from you?

Ans. to int'y 12. We were ninety to a hundred yards from the Graves, I should think; they were on our beam; at the time a little forward of the beam.

Int'y 13. Did you hear any orders given to the man at the wheel of the "Clement?" If yea, what were they?

Ans. to int'y 13. I did not hear any orders; there were none that I know of.

Int'y 14. Were you or not steering the usual way for vessels bound to the Lighthouse Channel?

Ans. to int'y 14. We were, with the wind as it was that day.

Int'y 15. Did you or not have any conversation with the men on board of the pilot-boat as to the collision; if yea, what did they say?

Ans. to int'y 15. They were talking about it after they came on board; the boat-keeper observed to me that if we had let him alone a few minutes longer, he should have gone right in between two rocks, out of our way. Something was said about picking up something from the boat; the steward said, let it go, she is well insured; that is about all I recollect.

Int'y 16. Was or was not the wheel of the "Clement" put up at any time after the boat was seen?

Ans. to int'y 16. No, sir, I don't think it was; I heard no such orders, and saw nothing of the kind; if it had been put up, she would have swung off more than she was.

Int'y 17. Were you attached to the "Clement" in any capacity at this time?

Ans. to int'y 17. No, sir; merely a passenger.

Int'y 11. What damage was done to the brig by the collision?

Ans. to int'y 18. It carried away her fore-yard, backropes, foretop-gallant stay, topmast studding-sail boom, and I believe her jumper stay, but I will not say certain as to that.

Int'y 19. Did you or not hear any hail from the boat; if yea, how long before the collision, and what was it?

Ans. to int'y 19. I heard no hail from the boat, not until she was within five or six yards; he then said "what are you trying to do?" or something like that.

Int'y 20. Did you or not hear any hail from the brig to the boat; if yea, how long before the collision, and what was it?

Ans. to int'y 20. I heard the mate hallooing to the boat, I can't tell how long before the collision, but I should think the boat was thirty-five to forty yards off; he sung out for them to keep off; I also saw him swing his hand to them to keep off; there was room enough then for them to have kept off.

Int'y 21. When hailed from the brig, could or could not the boat

have altered her course so as to get out of the way; was there or not time to do it?

Ans. to int'y 21. There was plenty of time then.

And in answer to cross-interrogatories propounded by C. P. Curtis, Jr., Esq., proctor of libellants, the said deponent further saith:—

1 + int'y. Did you keep your eyes on the "Hornet" from the time you first saw her till the moment of collision?

Ans. to 1 + int'y. No, sir.

2 + int'y. What were you doing in the meanwhile? where was the captain of the "Clement," and what was he doing?

Ans. to 2 + int'y. I wasn't doing anything myself; I was standing about on deck at the time; the captain, I believe, was on the quarter-deck.

3 + int'y. Can you state all the orders which he gave to the man at the wheel for half an hour previous to the collision?

Ans. to 3 + int'y. No, sir; I was not there near enough to hear the orders.

4 + int'y. Where was the captain of the "Clement" when the hail came from the "Hornet?"

Ans. to 4 + int'y. I believe the captain was aft then.

5 + int'y. Which hail was first, the one from the mate, or that from the pilot-boat?

Ans. to 5 + int'y. I heard the one from the mate first.

6 + int'y. Prior to the collision had you been talking with the captain of the "Clement?"

Ans. to 6 + int'y. No, sir; not very soon before that; I had that morning along.

7 + int'y. Had he told you anything about the way he meant to go up to Boston?

Ans. to 7 + int'y. No, sir; he said he could not go in Broad Sound, because he was not well acquainted, but should go in Ship Channel or next way; something was said about Broad Sound; he said he wasn't well acquainted and should go in the other way.

8 + int'y. Didn't the boat-keeper say, that if you had let him alone a little longer he should have gone between the Graves and the ledge?

Ans. to 8 + int'y. He didn't mention the rocks to me.

9 + int'y. You saw no change in the course of the pilot-boat, did you?

Ans. to 9 + int'y. No, sir.

10 + int'y. How near the wind was the "Clement" sailing when you heard the hail from the pilot-boat?

Ans. to 10 + int'y. I don't know exactly, within a point and a half of as near as she would go; I should think a little free; I could not say certain, for I did not look in the binnacles.

11 + int'y. Were you troubling yourself about the navigation of the "Clement" at the time?

Ans. to 11 + int'y. No, sir.

12 + int'y. Had you come the whole voyage from Charleston?

Ans. to 12 + int'y. Yes, sir.

13 + int'y. Did the "Clement" work easily?

Ans. to 13 + int'y. About the same as the common run of that class of vessels. She was not so heavy as some that I have seen.

14 + int'y. Isn't she a pretty fast sailer?

Ans. to 14 + int'y. I don't know much about her sailing; she is about a middling sailer for that model.

GEORGE G. BEAL.

June 20, 1854. And now the said Alexander F. Harrill having been by me first carefully examined and cautioned, and sworn to testify the whole truth, did depose and say in answer to interrogatories propounded by F. C. Loring, proctor of the respondents, as follows, viz:—

Int'y 1. Please state your age, residence, occupation, for how many years you have followed the seas, and in what capacity?

Ans. to int'y 1. My age is twenty-one years, residence, Portsmouth, N. H. I follow the sea, and have for nine years, as foremast hand and first and second mate.

Int'y 2. Are you well acquainted with the management and navigation of vessels? have you or not frequently sailed in and out of Boston Harbor?

Ans. to int'y 2. I am well acquainted with the management of all kinds of vessels that I have sailed in; I am not very well acquainted with Boston Harbor; I have sailed in and out a few times.

Int'y 3. Were you on board the brig "Clement" on tenth day of June last, at the time when a collision occurred between her and a pilot-boat? if yea, whereabouts in the vessel were you at the time?

Ans. to int'y 3. I was on board, and was standing on the starboard side of the forward house.

Int'y 4. Within an hour before that time, what course was the brig steering, how fast was she sailing, and how long before the collision did you see the "Hornet?"

Ans. to int'y 4. I don't know what course she was steering. I had nothing to do with the sailing of the vessel, so I paid no regard to the course she steered. I don't know exact how fast she was going. I saw the "Hornet" but a short time before the collision.

Int'y 5. When you first saw the "Hornet" what course was she steering, the same with you, or otherwise?

Ans. to int'y 5. She was on the same tack that we were, though she was laying nigher the wind.

Int'y 6. Did you observe which was sailing faster?

Ans. to int'y 6. I did not.

Int'y 7. Did a collision occur? if so, how did it happen? describe it particularly.

Ans. to int'y 7. As near as I could judge this boat was coming up under our lee, lying nearer than we were; the first thing I knew I

saw her across the brig's jib-boom; when she came across the brig's jib-boom she careened over to port. I see that she was going to fill. I run along by the lee waist, and saw the mate with a rope which was around the boat-keeper. I helped haul the boat-keeper in. During this time the boat careened over so that she filled. Then she righted, and her spring-stay came over the end of our weather foreyard arm; carried that away, and also the topmast studding-sail boom. On that, the boat's main rigging came down over our weather cathead, cleared it away, and the boat sunk.

Int'y 8. To what cause do you attribute the collision?

Ans. to int'y 8. The only cause I know is, the boat held her course. If the boat had altered her course we should have saved a collision.

Int'y 9. Whether or not was the course of the boat such as to bring her across the bow of the brig? Whether or not was the course of the boat altered at any time that you saw?

Ans. to int'y 9. It was, or else she would not have been there. The course of the boat was not altered from the time I saw her till we were on to her.

Int'y 10. Whether or not did she run across your bows?

Ans. to int'y 10. She run as far as she could till we come in contact.

Int'y 11. Whether or not could anything have been done on board the brig to prevent a collision? if yea, what?

Ans. to int'y 11. They could have run the vessel ashore. That would have saved a collision with the pilot-boat, but not with the rocks.

Int'y 12. How far were you from the Graves at the time of the collision, and how did they bear from you?

Ans. to int'y 12. I can't tell the exact distance from the Graves. The bearings I don't know anything about. I think they were a little forward of our beam when I saw the buoy last.

Int'y 13. Did you hear any orders given to the man at the wheel of the "Clement?" if yea, what were they?

Ans. to int'y 13. I heard none.

Int'y 14. Were you or not steering the usual way for vessels bound to the Lighthouse Channel?

Ans. to int'y 14. There's a great many ways of steering for the Lighthouse Channel. It is according to the wind. I have stated before that I did not know what course she was steering.

Int'y 15. Did you or not have any conversation with the men on board of the pilot-boat as to the collision? if yea, what did they say?

(The proctor for libellants objects to this int'y.)

Ans. to int'y 15. I heard no conversation.

Int'y 16. Was or was not the wheel of the "Clement" put up at any time after the boat was seen?

Ans. to int'y 16. I could not say; I was not aft; I heard no orders.

Int'y 17. Were you attached to the "Clement" in any capacity at this time?

Ans. to int'y 17. I was not; merely a passenger.

Int'y 18. What damage was done to the brig by the collision?

Ans. to int'y 18. It carried away the end of her foreyard and top-mast studding-sail boom, and some of her head-gear, and foretop-gallant stay.

Int'y 19. Did you or not hear any hail from the boat; if yea, how long before the collision, and what was it?

Ans. to int'y 19. I heard a hail from the boat when she was a very short distance from the brig. I understood it to be, "What are you trying to do?"

Int'y 20. Did you or not hear any hail from the brig to the boat? if yea, how long before the collision, and what was it?

Ans. to int'y 20. I heard the mate hail the boat to keep off. We were then all of forty yards from the boat.

Int'y 21. When hailed from the brig, could or could not the boat have altered her course so as to get out of the way? Was there or not time to do it?

Ans. to int'y 21. There was time.

Int'y 22. When the "Hornet" was very nigh to you, and it was obvious that the vessels were likely to come together, whether or not could the "Clement" have gone to windward of the Graves?

Ans. to int'y 22. I saw no chance for the "Clement" to get to windward of the Graves.

Int'y 23. If the course of the "Clement" had been changed, by putting her helm up so as to keep her off six points just before the collision, should you or not have known it?

Ans. to int'y 23. I certainly should.

Int'y 24. How long was it from when you first saw the buoy on the Graves up to the time of the collision?

Ans. to int'y 24. I could not say exactly. I saw the buoy and the "Hornet" about the same time. I should not say it was over fifteen minutes before the collision.

Int'y 25. Were the yards of the "Clement" braced up sharp or square?

Ans. to int'y 25. Sharp.

Int'y 26. When you first saw the boat, whereabouts was she in reference to the "Clement," on your beam or quarter?

Ans. to int'y 26. She was a little forward of our lee beam, nearly abeam, and I suppose about forty or forty-five yards from us.

And in answer to the following *cross interrogatories*, propounded by C. P. Curtis, Jr., Esq., proctor of libellants, the said deponent further saith:—

1 + int'y. Please to state candidly whether you think that collision would have occurred if you had been master of the brig?

Ans. to 1 + int'y. As to that I couldn't say.

ALEXANDER F. HARRILL.

UNITED STATES OF AMERICA,
District of Massachusetts.

I, Elias Merwin, a Commissioner in and for the District of Massachusetts to take affidavits and bail in civil causes depending in the Courts of the United States, appointed by the Circuit Court of the United States for the First Circuit, under the acts of Congress in such case made and provided, do hereby certify that the reason for taking the foregoing deposition is, and the fact is, that the testimony of the said witnesses is material on the trial of the cause named in the said caption, and that the time and place for taking the same were agreed upon by the parties, and that they did attend by their respective proctors.

I further certify that the said deposition was by me reduced to writing in the presence of the witness, and that he subscribed the same in my presence, and that I have retained it for the purpose of forwarding it under my own hand to the Court for which it was taken, with this certificate of the reason of its being taken.

I further certify that I am not of counsel, or attorney, to either of the parties in the cause in and for which the said deposition is taken, or interested in the event of said cause.

In testimony whereof, I have hereto set my hand and seal this twentieth day of June, in the year of our Lord eighteen hundred and fifty-four.

ELIAS MERWIN, [SEAL.]
Commissioner to take affidavits and bail of the Circuit Court of U. S., Mass. District.

Deposition of *Micah Humphrey*, of Dorchester, in the State of Massachusetts, master mariner, a witness for respondents, in answer to interrogatories addressed to him on behalf of the appellant.

1. Please to state your age, residence, and occupation, for how many years you have been engaged in navigation, and in what capacities?

Ans. My age is sixty-three years; my residence is Dorchester, in Massachusetts; I have been a master mariner thirty-nine years; I began to go to sea in 1806 as a boy, I then was seaman before the mast, then mate, and then master.

2. Whether or not you are familiarly and practically conversant with the management of vessels, and the rules and usages of the sea?

Ans. I should say I was.

3. Is there or not any rule or usage which requires that, when two vessels are sailing on the same tack, the one to leeward being close hauled, and the one to windward going a little free, say two points; the one to windward shall luff or keep off so as to keep out of the way of the other?

Ans. I should say the one to windward had to luff, provided there

was room to clear the land or weather shore, and I should say that was the general rule or usage.

If there is such a rule or usage, does it or not apply exclusively to vessels in the open sea, and to vessels of the same class; would it or not apply to vessels in a narrow channel, or if the one to windward was sailing near to rocks on her weather beam, or if the vessel to leeward was a steamboat or as easily managed as one?

Ans. It applies to all vessels and in all cases where there is room, but not where the vessel is jammed up on the weather shore; it would not apply to vessels in a narrow channel unless there was room for the leeward vessel to take care of herself, and it would not apply if the one to windward was sailing near to rocks on her weather beam, and I should say the rule would not apply where the vessel to leeward was a steamboat or as easily managed as one, because she could easily keep off, and she might press off a little and luff up and go across the stern of the other vessel; a steamboat can go where she likes, so if the leeward vessel was a superior sailer enough to the other, she could continue her course and go enough ahead of the other to go across her bows, whereas, if the leeward vessel was not the superior sailer, it would take her but a few minutes to drop astern of the other and cross her wake to windward.

5. Are you or not acquainted with the pilot-boats used in Boston harbor? if so, please to state what kind of vessels they are, and what kind of sailers, and whether easily manageable or not.

Ans. I have been acquainted with the pilot-boats generally in Boston Harbor some thirty years; as a class they have improved of late years; they are now first class schooner-rigged pilot-boats; considered to be first-rate sailing boats, and are more easily managed than most other boats, being so rigged that one man can manage them alone when it does not blow too hard, and they apparently always mind the helm very quick; I should say a man at the helm of a pilot-boat could let go the mainsheet, and keep her off five points in two minutes; I have been in the habit of taking pilots from the pilot-boats twenty-four or five years up to last March, and I have seen the boats, their management and capacities.

6. How do such vessels compare with steamboats as to the facility of being handled; please state their comparative advantages; how do they compare in the same respect with common merchantmen?

Ans. No comparison can be made between a sailing vessel and a steamboat, because a steamboat can go dead to windward if she pleases, and back her wheels and go astern; I cannot answer further as to the comparison between a pilot-boat and a steamboat; but pilot-boats are much more easily handled than any other class of merchant vessels, for one man can handle them, as I have said, and they can be kept out of the way of other vessels with very little trouble; their advantages are, they mind the helm easily, they are fore and aft rigged, they can shoot up and go to the windward, or they can heave the helm up and let go the mainsheet and go directly off before the

wind, and they can go two points nigher the wind when they are by the wind than any square rigged vessel.

7. Suppose, in the interrogatory numbered 3, the vessel to windward to be a common merchant brig fully laden, the one to leeward to be a pilot-boat—the brig to be sailing about two hundred yards from the Graves on her weather-beam, and bound to Lighthouse Channel—the pilot-boat sailing in such direction as would strike the brig on her lee bow if both vessels kept their course—under such circumstances, was it or not the duty of the brig to luff or keep off, or of the pilot-boat to keep out of the way?

Ans. I should say, by usage and rule, it was particularly the duty of the pilot-boat to keep out of the way. As ship-master I have never paid any attention to pilot-boats, whether crossing me one way or another. I always left them to take care of themselves; they usually run up to us one side or the other; we do not know their intentions, or where they are bound, or whether they want to speak us.

8. Would it or not be right, according to nautical usage, for a man at the wheel of a vessel, the master and officers being on deck, to alter the wheel when hailed to do so by another vessel without other orders?

Ans. I should say it would not be right, according to nautical usage, for a man at the wheel of a vessel to shift the helm at a command from another vessel when the master and officers of his own vessel were on deck.

9. Have you read the depositions of George D. Upham, Henry Brown, A. T. Hayden, T. C. Smith, J. Hawes, J. Morris, Luther Hammond, G. G. Beal, A. F. Harrill, taken in this case? If yea, whereabouts, in your judgment, did the collision therein mentioned occur? how near to the Graves?

Ans. I have read the depositions of the persons named, and their statements were so conflicting that I could not form much of a judgment about the distance; but from the whole scope of the depositions I judged the distance from the Graves that the collision occurred was from fifty to seventy rods.

10. Whether or not, in your judgment, if the brig had kept away when hailed from the boat she would have run down the boat?

Ans. She would then have run the pilot-boat down, according to the evidence in the depositions.

11. Was it or not the duty of the brig to luff so as to come into the wind and stop her way?

Ans. I should say not; she was bound to luff no higher than her sails would stand full.

12. Was it or not the duty of the pilot-boat to have kept out of the way?

Ans. I should say it was.

13. To what cause do you attribute the loss of the boat? Which

vessel was in fault? What ought each to have done which was not done?

Ans. In the circumstances stated in the depositions, I think the pilot-boat was bound to keep off till she could go ahead or astern of the brig; and if she had done that, there could have been no collision; and, on the circumstances stated in the depositions, I think the pilot-boat was in fault. I should say the brig was bound to hold her course in the circumstances stated.

14. Whether or not was the course of the brig seen and noticed by the boat-keeper as early as it should have been? Does there or not appear to have been any fault or negligence, in this respect, on the part of the boat or of the brig?

Ans. I don't recollect when the depositions say the course of the brig was first noticed on board the pilot-boat; but I think the pilot-boat ought not to have got so close under the bow of the brig as she did before hailing the brig, and that when she hailed the brig, the pilot-boat could after that have avoided the collision by starting the main sheet and putting the helm up.

15. If you know any other matter or thing tending to show that the collision was not owing to any fault or negligence on the part of the brig, please state the same.

Ans. I know none.

The appellees, protesting against and objecting to the foregoing interrogatories to the said Micah Humphrey, firstly, because it is not and cannot be known to the appellees to whom they are to be exhibited; secondly, because they are objectionable and incompetent for both form and substance, and seek to substitute the opinions of other persons, upon questions exclusively within the province of the Court to decide, propound the following interrogatories, *de bene esse*.

1 + int'y. If you say that pilot-boats are as easily managed as steamboats, state the names of all such pilot-boats, and state whether any one of them can lie nearer than 3 points to the wind.

Ans. to 1 + int'y. I have not said that pilot-boats were as easily managed as steamboats; I should say no pilot-boat can lie nearer than three points to the wind, or even there, and make any headway.

2 + int'y. Were you ever on board of the "Hornet?" and what do you know about her and her sailing qualities?

Ans. to 2 + int'y. I can't say whether I have been on board the "Hornet" or not; I think I have been; I have been in company with her and taken a pilot out of her and seen her sail ever since she was new.

3 + int'y. How near the wind could she lie, of your own knowledge?

Ans. to 3 + int'y. I never was on board of her when I saw her try, therefore I have no actual knowledge how near she can lie. I suppose about four points; they don't vary much from that, and

when I have been sailing with her, I have seen the "Hornet" go two points nigher than I could.

4 + int'y. Is not a pilot-boat with sails, dependent for her course upon the force and direction of the wind?

Ans. to 4 + int'y. Of course she is.

5 + int'y. Have you studied the reports of cases of collision in the English and American Courts? if yea, state what cases, and in what books of Reports?

Ans. to 5 + int'y. I was interested in the "Cherokee," who sustained a collision, and I read then cases on collisions, but I cannot say now what cases, or what books.

6 + int'y. Are you conversant with the course of reasoning which has induced the Judges of the English and American Courts to establish the rule of law, that a sailing vessel going free shall avoid one close-hauled? If yea, in what decision is such reasoning contained, and by what Judges were they delivered?

Ans. to 6 + int'y. I do not know the reasoning of the Judges, nor the cases containing it.

7 + int'y. If you say that a large vessel is not bound by this rule of law, in regard to a small one, state at what point of comparative size this exemption commences? how large must a vessel be to entitle her to run down a small one? and how small must the vessel be which is run down?

Ans. to 7 + int'y. I have not said that large vessels were not bound by the rule; there is no difference because of the size, but because of situations, being hemmed in by the shore, &c.

MICAH HUMPHREY.

UNITED STATES OF AMERICA,
First Circuit, District of Massachusetts.

This thirteenth day of February, 1855, personally appeared before me the said Micah Humphrey, and after having been cautioned and sworn to testify the whole truth, in reference to the cause for which his deposition was taken, was by me examined on the interrogatories and cross-interrogatories, and his answers thereto, written down by me in his presence, were, after being carefully read over to him by me, signed by him in my presence as and for his deposition. Taken by authority of the commission hereto prefixed for the case therein set forth.

EDW. G. LORING,
Commissioner to take affid'ts and bail in said District.

Deposition of *Alden Gifford*, of Boston, a witness for respondents, in answer to interrogatories addressed to him on behalf of the appellant.

1. Please to state your age, residence, and occupation; for how many years you have been engaged in navigation, and in what capacities.

To the first, he says: I am sixty years of age; I reside in Boston; I am a ship-master; I have been engaged in navigation forty years, as boy, and then man before the mast, as second mate, mate, and master; I have been master twenty-five years.

2. Whether or not you are familiarly and practically conversant with the management of vessels, and the rules and usages of the sea?

To the second, he says: I am.

3. Is there or not any rule or usage which requires that when two vessels are sailing on the same tack, the one to leeward being close-hauled, and the one to windward going a little free, say two points, the one to windward shall luff or keep off so as to keep out of the way of the other?

To the third, he says: Yes; the general rule is, that the vessel to windward should keep out of the way of the vessel to leeward; the vessel going free should keep out of the way of the one on the wind. I am speaking now of two vessels of the same class.

4. If there is such a rule or usage, does it or not apply exclusively to vessels in the open sea, and to vessels of the same class? Would it or not apply to vessels in a narrow channel, or if the one to windward was sailing near to rocks on her weather-beam, or if the vessel to leeward was a steamboat, or as easily managed as one?

To the fourth, he says: Yes, the rule applies exclusively to vessels in the open sea, and of the same class; it cannot apply where the vessel running free has not room from any cause, for a vessel has not a right to run ashore to keep out of the way of another; the vessel on the wind should bear away if she has room and the other has not. If the vessel to leeward was a steamboat, or was as easily managed as one, she ought to keep out of the way of a sailing vessel, a square-rigged sailing vessel at least; this is always understood to be the rule.

5. Are you or not acquainted with the pilot-boats used in Boston Harbor? if so, please to state what kind of vessels they are, what kind of sailers, and whether easily manageable or not.

To the fifth, he says: I am well acquainted with the pilot-boats used in Boston Harbor; they are small schooners, from fifty to seventy-five tons burthen generally, built expressly for their business, to sail quick and be managed easily; they are as fine vessels as there are; nothing can be better; they are very fast sailers, and very easily managed, very indeed; no vessels under sail are more so.

6. How do such vessels compare with steamboats as to the facility of being handled? Please state their comparative advantages. How do they compare in the same respect with common merchantmen?

To the sixth, he says: The pilot-boat are the nearest to a steamboat in ease of management; a steamboat can go dead to windward, a pilot-boat can't, but she can go nearer to it than any other. A steamboat can stop and back, and, probably, has an advantage of a pilot-boat in that respect, while a pilot-boat would probably luff and

keep off as quick as a steamboat. Pilot-boats are generally much more easily managed than other merchantmen; they have fore and aft sails and no yards to brace; everything leads aft, and one man can manage them.

7. Suppose, in the interrogatory numbered "3," the vessel to windward to be a common merchant brig fully laden, the one to leeward to be a pilot-boat; the brig to be sailing about two hundred yards from the Graves on her weather-beam and bound to Lighthouse Channel, the pilot-boat sailing in such direction as would strike the brig on her lee bow, if both vessels kept their course. Under such circumstances, was it or not the duty of the brig to luff or keep off, or of the pilot-boat to keep out of the way?

To the seventh, he says: It was the duty of the pilot-boat to keep out of the way, if she did not endanger herself by so doing.

8. Would it or not be right, according to nautical usage, for a man at the wheel of a vessel, the master and officers being on deck, to alter the wheel when hailed to do so by another vessel without other orders?

To the eighth, he says: It certainly would not.

9. Have you read the depositions of George D. Upham, Henry Brown, A. T. Hayden, T. C. Smith, J. Hawes, J. Morris, Luther Hammond, G. G. Beal, A. F. Harrill, taken in this case? if yea, whereabouts, in your judgment, did the collision therein mentioned occur? how near to the Graves?

To the ninth, he says: I have read the depositions of the persons named in the interrogatory, and in my judgment the collision occured at less than an hundred yards from the Graves; but I can't now state whether at sixty or eighty yards therefrom; I should say about sixty or eighty yards from the Graves.

10. Whether or not, in your judgment, if the brig had kept away when hailed from the boat she would have run down the boat?

To the tenth, he says: I do not now recollect the position of the vessels with accuracy enough to answer.

11. Was it or not the duty of the brig to luff, so as to come into the wind and stop her way?

To the eleventh, he says: By the depositions she did luff and come into the wind for the purpose of stopping her way. I don't think a square-rigged vessel was bound to do this, for the other was bound to keep out of her way.

12. Was it or not the duty of the pilot-boat to have kept out of the way?

To the twelfth, he says: Yes; it was as I have stated.

13. To what cause do you attribute the loss of the boat? which vessel was in fault? what ought each to have done which was not one?

To the thirteenth, he says: I attribute the loss of the boat to the ad management and negligence of those on board of her; the boat, consider, was in fault; the boat ought to have kept out of the way

of the brig, and kept off or astern of the brig. The brig had a right to hold her course.

14. Whether or not was the course of the brig seen and noticed by the boat-keeper as early as it should have been? Does there or not appear to have been any fault or negligence in this respect on the part of the boat or of the brig?

To the fourteenth, he says: I think there was very great neglect in this respect on the part of the boat-keeper, from the evidence; the weather was clear enough to see the brig five or ten miles off, and the boat-keeper ought to have seen her in full season to avoid her.

15. If you know any other matter or thing tending to show that the collision was not owing to any fault or negligence on the part of the brig, please state the same.

To the fifteenth. I know of no more facts; I have stated my opinion that the pilot-boat could and should have kept out of the way of the brig.

ALDEN GIFFORD.

The appellees, protesting against and objecting to the foregoing interrogatories to the said Alden Gifford, firstly, because it is not and cannot be known to the appellees to whom they are to be exhibited; secondly, because they are objectionable and incompetent for both form and substance, and seek to substitute the opinions of other persons upon questions exclusively within the province of the Court to decide, propound the following interrogatories, *de bene esse*:—

1 + int'y. If you say that pilot-boats are as easily managed as steamboats, state the names of all such pilot-boats, and state whether any one of them can lie nearer than 3 points to the wind?

To the first + he says: The names of some are, the "Coquette," the "Hornet," the "Daniel Webster," and others whose names I don't now recollect; none of them can lie nearer to the wind than three points.

2 + int'y. Were you ever on board of the "Hornet," and what do you know about her and her sailing qualities?

To the 2d + he says: I have been on board the "Hornet," and seen her sail in a race where I was one of the judges for awarding prizes, and I have seen her sail frequently in the summer time, most every day in passing across East Boston Ferry.

3 + int'y. How near the wind could she lie, of your own knowledge?

To the third + he says: I think she would sail very well within four points.

4 + int'y. Is not a pilot-boat with sails dependent for her course upon the force and direction of the wind?

To the fourth + int'y he says: Yes, sir.

5 + int'y. Have you studied the Reports of cases of collision in

the English and American Courts? if yea, state what cases, and in what books of reports.

To the fifth + he says: I have not read the cases in law reports of collision.

6 + int'y. Are you conversant with the course of reasoning which has induced the Judges of the English and American Courts to establish the rule of law, that a sailing vessel going free shall avoid one close hauled? if yea, in what decision is such reasoning contained, and by what judges were they delivered?

To the sixth + he says: I do not know the reasoning of the judges, nor the books containing them.

7 + int'y. If you say that a large vessel is not bound by this rule of law, in regard to a small one, state at what point of comparative size this exemption commences; how large must a vessel be to entitle her to run down a small one; and how small must the vessel be which is run down?

To the seventh + he says: I can only answer as to the case I answered, the exception exists as to a vessel like a pilot-boat and a square rigged merchant vessel.

ALDEN GIFFORD.

U. S. A., First Circuit,
District of Massachusetts.

This 24th day of February, 1855, personally appeared before me the above named Gifford, who, after being duly cautioned and sworn to speak the whole truth in relation to the cause for which his deposition was taken, was examined by me on the interrogatories and cross-interrogatories annexed to the commission hereto prefixed, and his answers thereto, written down by me in his presence, were, after being carefully read over to him by me, signed by him in my presence as and for his deposition, taken by the authority of said commission, to be used in the case therein set forth.

EDW. G. LORING,
Comm'r to take bail and affidavits in and for said District.

Fees.	
Gifford,	$5 00
Humphreys,	5 00
	10 00

This cause, appealed as aforesaid from the District Court, was entered at the May term, A. D. 1855 of this Court, and was then heard and argued by counsel for the respective parties, and thence was continued to this present term, when, by consent of parties, an assessor was appointed to assess and report the damages, if any, sustained by the libellants; and the said assessor having made his report,

the said cause came on to be further heard; and thereupon, upon consideration thereof, and of all the proofs in the case, it was ordered, adjudged, and decreed by the Court, that the said Matthew Hunt, Reuben S. Hunt, Henry O. Hunt, and Asa Josselyn, the libellants, do recover against the said Brig Clement, her tackle, apparel, and furniture, the sum of thirty-eight hundred thirty-two dollars and fifty-six cents, as and for their damages, and costs of suit taxed at

Whereupon, on the same day, to wit, the 24th day of November, A. D. 1855, the said Mayo claimed an appeal to the Supreme Court of the United States, to be holden at Washington on the first Monday of December next, and gave good and sufficient security to prosecute his appeal with effect, and to answer all damages and costs if he shall fail to make good his appeal; which security was, by consent of parties, approved by the Court; and the said appeal was allowed accordingly.

Attest: H. W. FULLER,
Clerk.

UNITED STATES OF AMERICA,
Massachusetts District.

I, Henry W. Fuller, Clerk of the Circuit Court of the United States for the First Circuit, Massachusetts District, do hereby certify that the foregoing is a true copy of the record and of all proceedings in the cause of Matthew Hunt *& als.*, libellants in adm'y, *vs.* The Brig Clement, Paul Mayo, claimant and appellant, together with a true copy of all the evidence filed in said cause in said Circuit Court, now certified of, pursuant to the 53d Rule of the Supreme Court of the United States.

In testimony whereof I have hereunto subscribed my name, and affixed the seal of the said Court at Boston, in said District, this fourth day of December, in the year of our Lord one thousand eight hundred and fifty-five, and of the Independence of these United States the eightieth.

[SEAL.] H. W. FULLER,
Clerk C. C. U. S., Mass. Dist.

Filed 11 Dec'r, 1855.

1542.

SUPREME COURT OF THE UNITED STATES.

THE BRIG CLEMENT,

MAYO, Claimant and Appellant,

vs.

MATTHEW HUNT, *et als.*, Libellants.

WHEREAS, the appellants have filed interrogatories to take the depositions of certain witnesses in this cause, and the libellants have been notified, and filed cross interrogatories, but without prejudice to the right they claim to object to the taking and introduction of new evidence in this stage of the cause, and the appellants have requested my direction under the XXVII. rule, I do hereby direct that a commission issue from the office of the Circuit Court for this District to Edward G. Loring, Esq., one of the Commissioners of said Court to examine the said witnesses, and that when executed the same be returned to the Supreme Court of the United States, unless the counsel shall, in writing, agree that the same remain open for mutual convenience, and expressly reserving to the libellants all rights of objection to the taking of evidence at this time.

P. SPRAGUE,

District Judge Mass. Dist. and Judge of the Circuit Court of the U. S., Ex. Officio.

It is agreed that this commission, when executed, shall remain open for the mutual convenience of counsel. The appellees expressly reserving all rights to object to the taking of evidence at this time, and all other objections.

C. P. CURTIS, JR.,

Proctor for Libellants.

F. C. LORING,

Proctor for Claimant.

UNITED STATES OF AMERICA,
Massachusetts District, ss.

The Circuit Court of the United States, within and for the Massachusetts District.

To EDWARD G. LORING, ESQ., *of Boston, in said District, United States Commissioner.*

KNOW YE, that reposing confidence in your wisdom, prudence and fidelity, we have appointed, and by these presents do authorize and empower you to take the answers [to the interrogatories hereunto annexed] of Alden Gifford, Micah Humphrey, and such other persons as may be produced as witnesses in behalf of the claimant at Boston, in said district. Witnesses to be examined on behalf of the claimant, and to be used in a certain cause now pending in said Court, wherein

THE BRIG "CLEMENT," Mayo, is Claimant and Appellant,

VERSUS,

MATTHEW HUNT *et als.*, Libellants.

And to this end, at certain days to be by you appointed for that purpose, to cause said witnesses, as aforesaid, to be brought before you, and each witness, while present before you, to examine carefully on oath touching the premises. And when you shall have taken the examination as aforesaid, to reduce, or cause the same to be reduced to writing, and to be subscribed by each of said witnesses in your presence. And the same, so taken and subscribed, to return, together with this Commission and your doings herein enclosed, sealed and directed to the Circuit Court aforesaid, holden at Boston, as soon as the same may be executed.

In testimony whereof, we have caused the seal of the said Circuit Court to be hereunto affixed.

Witness, the Honorable Roger B. Taney, at Boston, this twelfth day of September, in the year of our Lord one thousand eight hundred and fifty-six.

H. W. FULLER, *Clerk.*

Deposition of Alden Gifford.

Int'y. 1. Please to state your age, place of residence, and occupation; whether or not you have followed the seas, and if so, for how many years, and in what capacities?

Ans. to Int'y. 1. I am sixty years of age. My residence is in Boston. I have been a master of a vessel for twenty-five years. I have followed the seas about forty years, and I have served in all the capacities of sailor, officer and master of a vessel.

Int'y. 2. Whether or not you have had experience in, and are acquainted with, the rules and usages of navigation and seaman, and are you or not familiar with the entrance to the harbor of Boston?

Ans. to Int'y. 2. I am acquainted with the rules of navigation and its usages, and I am familiar with the entrance to Boston harbor.

Int'y. 3. Whether or not is there a rule of navigation which requires that when two vessels are approaching each other in opposite directions, one sailing free and the other close hauled, the one going free shall keep out of the way of the other?

Ans. to Int'y. 3. Yes; that is the rule of navigation.

Int'y. 4. Whether or not in a case where two vessels were sailing in the same direction, and *on the same tack*, one a little nearer to the wind than the other, would this rule apply, and require the vessel ahead, if she were sailing most free, to luff or bear away to avoid a collision?

(Objected to.)

Ans. to Int'y. 4. I should think not. If the vessel was ahead she has nothing to apprehend from the vessel astern of her.

Int'y. 5. Whether or not in such a case would it be the duty of the vessel astern to luff or bear away so as to avoid running into the other without regard to which was sailing most free?

(Objected to.)

Ans. to Int'y. 5. The vessel astern must luff or bear away, or do anything to keep clear of a collision, as she has a chance to choose her position in coming up with the other vessel.

Int'y. 6. Suppose two vessels to be sailing on the same tack, one a brig a little ahead and to windward, sailing within one or two points as near as she could go, the one astern and to leeward, a schooner close hauled, and the faster sailor—that if both vessels held their courses, the schooner would overtake the brig and strike her on the lee bow; whether or not would the rule mentioned in the third interrogatory apply to this case, and require the brig to luff or bear away because she was sailing most free?

(Objected to for substance.)

Ans. to Int'y. 6. I should think the rule would not apply—that the brig would not be required to bear away, or luff to avoid the schooner, but should stand her course, and the schooner should guard against running into the brig for the reason stated in my preceding answer.

Int'y. 7. Whether or not does that rule apply to vessels sailing on the same tack, or is confined to the case of vessels approaching each other on opposite tacks?

(Objected to for substance.)

Ans. to Int'y. 7. It is confined to the case of vessels approaching each other on opposite tacks.

Int'y 8. Suppose, in the case stated in the fifth interrogatory, that the brig was sailing along rocks about one hundred yards to windward, so that she could not luff without danger of running on to them unless she luffed up into the wind, and could not bear away without danger of striking the schooner, would it or not be the brig's duty to luff up and stop her headway and wear round?

(Objected to.)

Ans. to Int'y. 8. I should think not. I don't think the brig would have anything to do but to continue her course.

Int'y. 9. Whether or not in such a case would it be the duty of the schooner to luff or bear away so as to prevent a collision?

(Objected to.)

Ans. to Int'y. 9. Yes; I should think it would.

Int'y. 10. If both vessels holding their course, the schooner to leeward would strike the brig on her lee bow, which would be bound to alter her course so as to avoid a collision?

(Objected to.)

Ans. to Int'y. 10. The schooner.

Int'y. 11. Suppose the brig to be a coaster of about tons fully laden, sailing by the Graves towards the Light House Channel for Boston, the schooner to be about 53 tons, intending to go through a gap in the Graves, through which a large vessel could not pass, into Broad Sound, which vessel would be bound to give way? Please to give the reasons of your judgment.

(Objected to.)

Ans. to Int'y. 11. I think the schooner should give way, because the schooner is much more manageable than the brig, a square rigged vessel, and the schooner coming up behind the brig and overhauling her, has no right to drive her from her course.

Int'y. 12. Suppose such a brig to be sailing by and outside of the Graves near the entrance of Boston harbor, bound for Light House Channel, steering S. S. W., wind about W. N. W., going about 6 knots, and within a point or two as close to the wind as she could go, the Graves being a little forward of her starboard beam, and from 80 to 100 yards off, that a Boston pilot boat of the first class in charge of a boat keeper, should come up on her lee bow, on the same tack but close hauled, steering directly for the Graves, intending to pass through a gap in them into Broad Sound; that the two vessels sailing on converging lines, the boat would overtake the brig and strike her on the lee bow if neither altered its course, that for the brig to luff as much as she could without coming into the wind would not prevent a

collision, and that she could not do that without danger of going ashore, and that to leeward was the open sea, what in such a case ought the brig to do, and what the pilot boat?

(Objected to.)

Ans. to Int'y. 12. The brig ought to keep on her course, and the pilot boat ought to keep out of the way.

Int'y. 13. Whether or not would there be any duty on the part of the brig to luff or bear away?

(Objected to.)

Ans. to Int'y. 13. I should think not.

Int'y. 14. Whether or not it would be her duty to keep her course?

(Objected to.)

Ans. to Int'y. 14. I should think so.

Int'y. 15. Whether or not it would be the duty of the pilot boat to luff and go under the brig's stern, or to bear away?

(Objected to.)

Ans. to Int'y. 15. She might do either she pleased which would avoid the collision.

Int'y 16. If the boat keeper in charge of the pilot boat did not observe the course of the brig, or that there was danger of a collision, until he heard the ripple under her bows, would that or not indicate negligence on his part, and if yea, what degree of negligence?

(Objected to.)

Ans. to Int'y. 16. I should think it indicated gross negligence on his part.

Int'y. 17. If he was hailed from the brig to keep off in season to do so, and did not mind it, would or would not that show negligence, carelessness, or want of presence of mind on his part?

(Objected to.)

Ans. to Int'y. 17. I should think so decidedly.

Int'y. 18. Is there or not any rule of navigation by which one vessel, because close-hauled, has a right to compel another, going more free, to luff so as to run ashore or stop her headway, if the one close hauled has plenty of sea room to leeward, and could easily prevent a collision by luffing or bearing off herself?

(Objected to.)

Ans. to Int'y. 18. I think there is no such rule.

Int'y. 19. How would this be under the same circumstances if the vessels were approaching on opposite tacks? How if both were on the same tack, one astern and close hauled, overhauling the other?

(Objected to.)

Ans to Int'y. 19. If approaching on opposite tacks, and either is straightened in sea room, the other must luff or keep off. If both were on the same tack, and one astern and overhauling the other, the one astern must avoid the collision.

Int'y. 20. If a vessel under sail runs into one at anchor in broad daylight and pleasant weather, which would be considered in fault?

(Objected to.)

Ans. to Int'y. 20. The one that run into the other.

Int'y. 21. If, instead of being at anchor, the vessel ahead was a dull sailer, would it or not be the duty of the vessel astern to avoid running into her?

Ans. to Int'y. 21. Yes, sir; it would.

Int'y. 22. In such a case should or should not the vessel ahead keep her course, and the one astern do what was necessary to avoid a collision?

(Objected to.)

Ans. to Int'y. 22. Yes, sir; to both branches.

Int'y. 23. Would it or not make any difference in this respect if the vessel ahead was to windward, and had the wind a little more free than the other?

(Objected to.)

Ans. to Int'y. 23. I don't think it would make any difference, because the vessel astern must choose her position, and keep out of the way.

Int'y. 24. Whether or not are there any reasons arising from the occupation, rig and easy management of pilot boats by which more or less vigilance would be required of a merchant vessel to avoid a collision with them than with other vessels. If yea, state why, fully?

(Objected to.)

Ans. to Int'y. 24. I should think not, because pilot boats are so easily managed that they are the last vessels in the world that should run into a square-rigged vessel.

Int'y. 25. Whether or not is this true of all places where vessels usually trade and pilots are to be found so far as your experience goes?

(Objected to.)

Ans. to Int'y. 25. Yes.

Int'y. 26. Whether or not is it true of the harbor of Boston?

Ans. to Int'y. 26. I should think it was.

Int'y. 27. What kinds of vessels are there used for pilot boats? How do they compare with merchant vessels as to ease in managing, altering courses, &c.?

Ans. to Int'y. 27. They are fore and aft schooners without any square sails, from fifty to a hundred tons, and they are much more easily managed than square-rigged vessels. There are no vessels more manageable than pilot boats.

Int'y. 28. Whether or not, according to the usages of seamen and rules of navigation in the case stated in the 10th and 11th interrogatories, would it be required of the master of the brig, if he knew the other vessel to be a pilot boat, to keep a look out for her, and take care to avoid a collision with her provided he kept on his course?

(Objected to.)

Ans. to Int'y. 28. I should think not. I think the master of the brig would have nothing to do with a vessel coming up astern.

Int'y. 29. Whether or not, if he kept his course, would he have the right to expect that the pilot boat would do what was necessary to avoid a collision?

(Objected to.)

Ans. to Int'y. 29. Yes, sir.

Int'y. 30. If he kept his course until he saw that the pilot boat did not intend to change hers, and would strike him on the lee bow, and then he ordered his helm hard down and was obeyed, and while he was swinging round the pilot boat crossed his bows, caught her rigging in the end of his jibboom, and was tipped over and sunk, whether or not in your judgment was there fault on his part?

(Objected to.)

Ans. to Int'y. 30. I should think not the least. I don't know what the master of the brig could have done more.

Int'y. 31. Whether or not in such a case would there be any reason to impute negligence or carelessness, or other fault to the boat keeper in charge of the pilot boat?

(Objected to.)

Ans. to Int'y. 31. I should think there would.

The appellees, not waiving, but insisting upon their objection to the right of the appellants to introduce further proof at the present stage of this cause; and further objecting to the competency of the evidence sought, as usurping the province of the Court, and relating to questions of law, propose the following cross interrogatories. *De bene esse.*

1 + Int'y. Have you once before given your deposition in this case?

Ans. to 1 + Int'y. I have, sir.

2 + Int'y. From what treatises or what series of reports have you derived your knowledge of the law relating to the duties of sailing vessels and pilot schooners?

Ans. to 2 + Int'y. From my own experience only.

3 + Int'y. Did you mean to be understood to say that a pilot schooner of ninety or a hundred tons, close hauled, is bound to give way to a coasting schooner of thirty or fifty tons going before the wind; and that if a collision should ensue, the pilot schooner would be alone to blame?

Ans. to 3 + Int'y. I have answered on circumstances stated in the direct interrogatories. In the circumstances stated in this 2d cross interrogatory if the vessels were meeting, the one sailing free should give way.

4 + Int'y. Do you mean to say that a coasting vessel may run down a pilot schooner without keeping any lookout for her, or keeping off a point?

Ans. to 4 + Int'y. No, sir.

5 + Int'y. Do you mean to say that any vessel of any size, going before the wind or free, may run down a pilot boat which is seen in her vicinity without bearing away a point?

Ans. to 5 + Int'y. No, sir.

6 + Int'y. If you say that the schooner of fifty tons must keep a lookout for a pilot schooner of one hundred tons, state how large a schooner or other vessel must be to entitle her to run down a pilot schooner with impunity?

Ans. to 6 + Int'y. No vessel of any size can run down another with impunity.

7 + Int'y. Suppose two vessels to be approaching each other with the wind south—one heading north-east, and the other east-south-east—which one would be close hauled, and which one "going free," and how many points free?

Ans. to 7 + Int'y. The one going east-south east would be close hauled, the other must be going nearly before the wind. The points I can't tell precisely here.

8 + Int'y. State on which tack, larboard or starboard, each of these two vessels would be sailing?

Ans. to 8 + Int'y. The vessel going east-south-east would be sailing with her starboard tacks aboard; the other would have her starboard tacks aboard going nearly before the wind.

9 + Int'y. If there was danger of collision, which one of these two vessels would be bound to give way?

Ans. to 9 + Int'y. The one going free.

10 + Int'y. Did you ever have the charge of, or navigate, a pilot schooner. If so, for how long?

Ans. to 10 + Int'y. Never.

ALDEN GIFFORD.

Deposition of William Sturgis.

Int'y. 1. Please to state your age, place of residence and occupation; whether or not you have followed the seas, and if so, for how many years, and in what capacities?

Ans. to Int'y. 1. I am nearly seventy-five; reside in Boston. I am a merchant. I followed the seas, say twelve years, in all capacities generally, from a green hand to master.

Int'y. 2. Whether or not you have had experience in and are acquainted with the rules and usages of navigation and seamen, and are you or not familiar with the entrance to the harbor of Boston?

Ans. to Int'y 2. I have had acquaintance and experience in the rules and usages of navigation and seamen, and I am somewhat familiar with the entrance to the harbor of Boston.

Int'y. 3. Whether or not is there a rule of navigation which requires that when two vessels are approaching each other in opposite directions, one sailing free and the other close hauled, the one going free shall keep out of the way of the other?

Ans. to Int'y. 3. I believe there is such a rule.

Int'y. 4. Whether or not in a case where two vessels were sailing in the same direction and *on the same tack*, one a little nearer to the wind than the other, would this rule apply and require the vessel ahead, if she were sailing most free, to luff or bear away to avoid a collision?

(Objected to.)

Ans. to Int'y. 4. The vessel coming up astern with a free wind is bound to keep out of the way of the vessel ahead. If both are free, each has the control of its own motion, and has the power of luffing or bearing away.

Int'y. 5. Whether or not, in such a case, would it be the duty of the vessel astern to luff or bear away so as to avoid running into the other, without regard to which was sailing most free?

(Objected to.)

Ans. to Int'y. 5. I should say, yes.

Int'y. 6. Suppose a fair day, smooth sea, and seven knot breeze, and two vessels to be sailing on the same tack, one a brig, a little ahead and to windward, sailing within one or two points as near as she could go, the one astern and to leeward a schooner, close hauled, and the faster sailer, that if both vessels held their courses, the schooner would overtake the brig and strike her on the lee bow; whether or not would the rule mentioned in the third interrogatory apply to this case, and require the brig to luff or bear away because she was sailing most free?

(Objected to for substance.)

Ans. to Int'y. 6. I do not think it would.

Int'y. 7. Whether or not does that rule apply to vessels sailing on the same tack, or is confined to the case of vessels approaching each other on opposite tacks?

(Objected to for substance.)

Ans. to Int'y. 7. The rule, I consider, was made for vessels approaching each other; and I think that when vessels are on the same tack, and one overhauling the other, the vessel astern is bound to keep out of the way.

Int'y. 8. Suppose, in the case stated in the fifth interrogatory, that the brig was sailing along rocks about one hundred yards to windward, so that she could not luff without danger of running on to them unless she luffed up into the wind, and could not bear away without danger of striking the schooner, would it or not be the brig's duty to luff up, and stop her headway, and wear round?

(Objected to.)

Ans. to Int'y. 8. I have answered this. It is the duty of the vessel astern to keep out of the way on the facts stated.

Int'y. 9. Whether or not, in such a case, would it be the duty of the schooner to luff or bear away so as to prevent a collision?

(Objected to.)

Ans. to Int'y 9. It would be her duty to prevent the collision, and to avoid running into the brig.

Int'y. 10. If both vessels holding their courses, the schooner to leeward would strike the brig on her lee bow, which would be bound to alter her course so as to avoid a collision?

(Objected to.)

Ans. to Int'y. 10. The question is answered. The schooner would.

Int'y. 11. Suppose the brig to be a coaster of about 275 tons, fully laden, sailing by the Graves two points free towards the Light House Channel for Boston, the schooner to be about fifty-three tons, close hauled, intending to go through a passage next south-west of the Graves into Broad Sound, which vessel would be bound to give way. Please to give the reasons of your judgment?

(Objected to.)

Ans. to Int'y 11. Under such circumstances stated, the schooner has no right to run into the brig. If both vessels continuing their course, the schooner would run into the brig. She has no right to do so, and the schooner is bound to give way to avoid running into the brig, for the general reason that, when two vessels are on the same course, the one astern, with room to do otherwise, has no right to run into the other, any more than one vehicle which, overtaking another on land, may run into it.

Int'y. 12. Suppose such a brig to be sailing by and outside of the Graves, near the entrance of Boston harbor, bound for Light House Channel, steering S. S. W., wind about W. N. W., going about six knots, and within a point or two as close to the wind as she could go, the Graves being a little forward of her starboard beam, and from 80 to 100 yards off; that a Boston pilot boat of the first class, in charge of a boat keeper, should come up on her lee bow, on the same tack, but close hauled, steering directly for the Graves, intending to pass through a gap in them into Broad Sound; that the two vessels sailing on converging lines, the boat would overtake the brig, and strke her on the lee bow if neither altered its course; that for the brig to luff as much as she could without coming into the wind would not prevent a collision, and that she could not do that without danger of going ashore, and that to leeward was the open sea, what in such a case ought the brig to do, and what the pilot boat?

(Objected to.)

Ans. to Int'y. 12. The brig ought to keep on and the pilot boat to keep off.

Int'y. 13. Whether or not would there be any duty on the part of the brig to luff or bear away?

(Objected to.)

Ans. to Int'y. 13. In the case stated, I should hold it was not the duty of the brig to luff or bear away.

Int'y. 14. Whether or not it would be her duty to keep her course?

(Objected to.)

Ans. to Int'y. 14. She is justified in keeping her course.

Int'y. 15. Whether or not it would be the duty of the pilot boat to luff and go under the brig's stern, or to bear away?

(Objected to.)

Ans. to Int'y 15. One or the other.

Int'y. 16. If the boat keeper in charge of the pilot boat did not observe the course of the brig, or that there was danger of a collision, until he heard the ripple under her bows, would that or not indicate negligence on his part, and if yea, what degree of negligence?

(Objected to.)

Ans. to Int'y. 16. Such a degree of negligence as caused the collision.

Int'y. 17. If he was hailed from the brig to keep off in season to do so and did not mind it, would or would not that show negligence, carelessness, or want of presence of mind on his part?

(Objected to.)

Ans. to Int'y. 17. Yes, or a determination to run into the brig.

Int'y. 18. Is there or not any rule of navigation by which one vessel, because close hauled, has a right to compel another, going more free, to luff so as to run ashore or stop her headway, if the one close hauled has plenty of sea room to leeward, and could easily prevent a collision by luffing or bearing off herself?

(Objected to.)

Ans. to Int'y. 18. I do not know of any such rule.

Int'y. 19. How would this be under the same circumstances if the vessels were approaching on opposite tacks. How if both were on the same tack, one astern and close hauled overhauling the other?

(Objected to.)

Ans. to Int'y. 19. If they are approaching, one free and the other on the wind, the vessel going free must keep off. If both are on the wind, the vessel with her starboard tacks aboard has a right to hold her course.

Int'y. 20. If a vessel under sail runs into one at anchor in broad day light and pleasant weather, which would be considered in fault?

(Objected to.)

Ans. to Int'y. 20. It would depend on circumstances.

Int'y. 21. If, instead of being at anchor, the vessel ahead was a dull sailer, would it or not be the duty of the vessel astern to avoid running into her?

Ans. to Int'y. 21. Whether the one ahead was a dull or fast sailer, it would be the duty of the vessel astern to avoid running into her.

Int'y. 22. In such a case, should or should not the vessel ahead keep her course, and the one astern do what was necessary to avoid a collision?

(Objected to.)

Ans. to Int'y. 22. I have so answered already.

Int'y. 23. Would it or not make any difference in this respect if the vessel ahead was to windward, and had the wind a little more free than the other?

(Objected to.)

Ans. to Int'y. 23. No.

Int'y. 24. Whether or not are there any reasons arising from the occupation, rig and easy management of pilot boats by which more or less vigilance would be required of a merchant vessel to avoid a collision with them than with other vessels. If yea, state why fully?

(Objected to.)

Ans. to Int'y. 24. Not that I am aware of.

Int'y. 25. Whether or not is this true of all places where vessels usually trade and pilot boats are to be found, as far as your experience goes?

Ans. to Int'y. 25. It is.

Int'y. 26. Whether or not is it true of the harbor of Boston?

Ans. to Int'y. 26. I believe it is.

Int'y. 27. What kind of vessels are used for pilot boats; how do they compare with merchant vessels as to ease in managing, altering courses, &c.?

Ans. to Int'y. 27. They are schooner-rigged boats and easily managed. A pilot boat is managed more easily than a square-rigged vessel.

Int'y. 28. Whether or not, according to the usages of seamen and rules of navigation in the case stated in the 10th and 11th interrogatories, would it be required of the master of the brig, if he knew the other vessel to be a pilot boat, to keep a look out for her, and take care to avoid a collision with her provided he kept on his course?

(Objected to.)

Ans. to Int'y. 28. The master of the brig is under no greater obligation to avoid a pilot boat than he is any other vessel.

Int'y. 29. Whether or not, if he kept his course, would he have the right to expect that the pilot boat would do what was necessary to avoid a collision?

(Objected to.)

Ans. to Int'y. 29. Every man has a right to expect any other man would do his duty.

Int'y. 30. If he kept his course until he saw that the pilot boat did not intend to change her's, and would strike him on the lee bow, and then he ordered his helm hard down and was obeyed, and while he was swinging round the pilot boat crossed his bows, caught her rigging in the end of his jibboom, and was tipped

over and sunk, whether or not in your judgment was there fault on his part?

(Objected to.)

Ans. to Int'y. 30. I should think there was no fault on his part in the case stated.

Int'y. 31. Whether or not in such a case would there be any reason to impute negligence, or carelessness, or other fault to the boat keeper in charge of the pilot boat?

(Objected to.)

Ans. to Int'y. 31. I should think there would.

Answers of William Sturgis to the cross interrogatories.

1 + Int'y. Have you once before given your deposition in this case?

Ans. to 1 + Int'y. No.

2 + Int'y. From what treatises or what series of reports have you derived your knowledge of the law relating to the duties of sailing vessels and pilot schooners?

Ans. to 2 + Int'y. None.

3 + Int'y. Do you mean to be understood to say that a pilot schooner of ninety or a hundred tons, close hauled, is bound to give way to a coasting schooner of thirty or fifty tons going before the wind, and that if a collision should ensue, the pilot schooner would be alone to blame?

Ans. to 3 + Int'y. The vessel going before the wind is bound to avoid the collision if she can.

4 + Int'y. Do you mean to say that a coasting vessel may run down a pilot schooner without keeping any look out for her, or keeping off a point?

Ans. to 4 + Int'y. No.

5 + Int'y. Do you mean to say that any vessel of any size, going before the wind or free, may run down a pilot boat which is seen in her vicinity without bearing away a point?

Ans. to 5 + Int'y. No.

6 + Int'y. If you say that the schooner of fifty tons must keep a look out for a pilot schooner of one hundred tons, state how large a schooner or other vessel must be to entitle her to run down a pilot schooner with impunity?

Ans. to 6 + Int'y. I don't know.

7 + Int'y. Suppose two vessels to be approaching each other with the wind south, one heading north east, and the other east south east, which one would be close hauled and which one "going free," and how many points?

Ans. to 7 + Int'y. The wind south, a vessel steering east south east is on the wind, and the one steering north east is six points free.

8 + Int'y. State in which tack, larboard or starboard, each of these two vessels would be sailing?

Ans. to 8 + Int'y. Both are on the starboard tack.

9 + Int'y. If there was danger of collision, which one of these two vessels would be bound to give way?

Ans. to 9 + Int'y. The vessel going free is bound to avoid the vessel on the wind.

10 + Int'y. Did you ever have the charge of or navigate a pilot schooner, if so, for how long?

Ans. to 10 + Int'y. No.

WILLIAM STURGIS.

Deposition of John A. Cunningham.

I, John A. Cunningham, of lawful age to testify on oath, depose and say, in answer to the interrogatories, as follows:

Int'y. 1. Please to state your age, place of residence and occupation; whether or not you have followed the seas, and if so, for how many years, and in what capacities?

Ans. to Int'y. 1. I am thirty-seven years of age, and a merchant. I have been at sea ten years as supercargo and captain.

Int'y. 2. Whether or not you have had experience in and are acquainted with the rules and usages of navigation and seamen, and are you or not familiar with the entrance to the harbor of Boston?

Ans. to Int'y. 2. To both branches of the interrogatory I say, yes.

Int'y 3. Whether or not is there a rule of navigation which requires that, when two vessels are approaching each other in opposite directions, one sailing free and the other close-hauled, the one going free shall keep out of the way of the other?

Ans. to Int'y. 3. There is.

Int'y. 4. Whether or not, in a case where two vessels were sailing in the same direction and *on the same tack*, one a little nearer to the wind than the other, would this rule apply and require the vessel ahead, if she were sailing most free, to luff or bear away to avoid a collision?

(Objected to.)

Ans. to Int'y. 4. I should say not.

Int'y. 5. Whether or not, in such a case, would it be the duty of the vessel astern to luff or bear away so as to avoid running into the other, without regard to which was sailing most free?

(Objected to.)

Ans. to Int'y. 5. Yes.

Int'y. 6. Suppose a fair day, smooth sea and seven knot breeze, and two vessels to be sailing on the same tack, one a brig, a little ahead and to windward, sailing within one or two points as near as she could go, the one astern, and to leeward, a schooner, close hauled, and the faster sailer; that if both vessels held their courses, the schooner would overtake the brig, and strike her on the lee bow, whether or not would the rule mentioned in the third interrogatory

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apply to this case, and require the brig to luff or bear away because she was sailing most free?

(Objected to for substance.)

Ans. to Int'y. 6. No.

Int'y. 7. Whether or not does that rule apply to vessels sailing on the same tack, or is confined to the case of vessels approaching each other on opposite tacks?

(Objected to for substance.)

Ans. to Int'y. 7. I have always understood that the rule was confined to vessels on opposite tacks.

Int'y. 8. Suppose, in the case stated in the sixth interrogatory, that the brig was sailing along rocks about 100 yards to windward, so that she could not luff without danger of running on to them, unless she luffed up into the wind, and could not bear away without danger of striking the schooner, would it or not be the brig's duty to luff up, and stop her headway, and wear round?

(Objected to.)

Ans. to Int'y. 8. Certainly not.

Int'y. 9. Whether or not, in such a case, would it be the duty of the schooner to luff or bear away so as to prevent a collision?

(Objected to.)

Ans. to Int'y. 9. Yes.

Int'y. 10. If both vessels holding their course, the schooner to leeward would strike the brig on her lee bow, which would be bound to alter her course so as to avoid a collision?

(Objected to.)

Ans. to Int'y. 10. The schooner.

Int'y. 11. Suppose the brig to be a coaster of about 275 tons, fully laden, sailing by the Graves, two points free, towards the Light House Channel for Boston, the schooner to be about 53 tons, close hauled, intending to go through a passage next south-west of the Graves, into Broad Sound, which vessel would be bound to give way? Please to give the reasons of your judgment.

(Objected to.)

Ans. to Int'y. 11. The schooner would be bound to give way. My reasons are, that the brig would lose more ground if she gave way than the schooner, because the brig could not luff without danger to herself, and she could not keep off without making it more probable the schooner would run into her.

Int'y. 12. Suppose such a brig to be sailing by and outside of the Graves, near the entrance of Boston harbor, bound for Light House Channel, steering S. S. W., wind about W. N. W., going about six knots, and within a point or two as close to the wind as she could go, the Graves being a little forward of her starboard beam, and from 80 to 100 yards off—that a Boston pilot boat of the first class, in charge of a boat keeper, should come up on her lee bow, on the same tack, but close hauled, steering directly for the Graves, intending to pass

through a gap in them into Broad Sound; that the two vessels, sailing on converging lines, the boat would overtake the brig, and strike her on the lee bow if neither altered its course; that for the brig to luff as much as she could without coming into the wind would not prevent a collision, and that she could not do that without danger of going ashore, and that to leeward was the open sea, what in such a case ought the brig to do, and what the pilot boat?

(Objected to.)

Ans. to Int'y. 12. I should say the brig should keep her course, and that the schooner should keep out of the way.

Int'y. 13. Whether or not would there be any duty on the part of the brig to luff or bear away?

(Objected to.)

Ans. to Int'y. 13. None.

Int'y. 14. Whether or not it would be her duty to keep her course?

Ans. to Int'y. 14. Yes.

Int'y. 15. Whether or not it would be the duty of the pilot boat to luff and go under the brig's stern, or to bear away?

Ans. to Int'y. 15. That would depend on the schooner's position. If there was room she ought to luff; if not, to keep away.

Int'y. 16. If the boat keeper in charge of the pilot boat did not observe the course of the brig, or that there was danger of a collision, would that or not indicate negligence on his part, and if yea, what degree of negligence?

(Objected to.)

Ans. to Int'y. 16. Great negligence.

Int'y. 17. If he was hailed from the brig to keep off in season to do so, and did not mind it, would or would not that show negligence, carelessness, or want of presence of mind on his part?

(Objected to.)

Ans. to Int'y. 17. It would.

Int'y. 18. Is there or not any rule of navigation by which one vessel, because close hauled, has a right to compel another, going more free, to luff, so as to run ashore or stop her headway, if the one close hauled has plenty of sea room to leeward, and could easily prevent a collision by luffing or bearing off herself?

(Objected to.)

Ans. to Int'y. 18. None that I know of.

Int'y. 19. How would this be under the same circumstances if the vessels were approaching on opposite tacks. How if both were on the same tack, one astern and close hauled overhauling the other?

(Objected to.)

Ans. to Int'y. 19. Under the same circumstances, if both vessels were approaching each other, I should say the schooner should keep away. If both were on the same tack, the one astern should keep away.

Int'y. 20. If a vessel under sail runs into one at anchor in broad day light and pleasant weather, which would be considered in fault?

(Objected to.)

Ans. to Int'y. 20. The one under way.

Int'y. 21. If, instead of being at anchor, the vessel ahead was a dull sailer, would it or not be the duty of the vessel astern to avoid running into her?

Ans. to Int'y. 21. It would.

Int'y. 22. In such a case, should or should not the vessel ahead keep her course, and the one astern do what was necessary to avoid a collision?

(Objected to.)

Ans. to Int'y. 22. Yes.

Int'y. 23. Would it or not make any difference in this respect if the vessel ahead was to windward, and had the wind a little more free than the other?

(Objected to.)

Ans. to Int'y. 23. It would not, always supposing the same circumstances.

Int'y. 24. Whether or not are there any reasons arising from the occupation, rig and easy management of pilot boats by which more or less vigilance would be required of a merchant vessel to avoid a collision with them than with other vessels. If yea, state why fully?

(Objected to.)

Ans. to Int'y. 24. I think less, as the pilot boat is more easily managed.

Int'y. 25. Whether or not is this true of all places where vessels usually trade, and pilots are to be found, so far as your experience goes?

(Objected to.)

Ans. to Int'y. 25. Yes.

Int'y. 26. Whether or not is it true of the harbor of Boston?

Ans. to Int'y. 26. Yes.

Int'y 27. What kind of vessels is there used for pilot boats? How do they compare with merchant vessels as to ease in managing, altering courses, &c.?

Ans. to Int'y. 27. The kind of vessels used is schooners. They are more easily managed than any kind of merchant vessels.

Int'y. 28. Whether or not, according to the usages of seamen and rules of navigation, in the case stated in the 10th and 11th interrogatories, would it be required of the master of the brig, if he knew the other vessel to be a pilot boat, to keep a look out for her, and take care to avoid a collision with her, provided he kept on his course?

(Objected to.)

Ans. to Int'y. 28. No.

Int'y. 29. Whether or not, if he kept his course, would he have the right to expect that the pilot boat would do what was necessary to avoid a collision?

(Objected to.)

Ans. to Int'y. 29. He would.

Int'y. 30. If he kept his course until he saw that the pilot boat did not intend to change hers, and would strike him on the lee bow, and then he ordered his helm hard down, and was obeyed, and while he was swinging round the pilot boat crossed his bows, caught her rigging in the end of his jibboom, and was tipped over and sunk, whether or not in your judgment was there fault on his part?

(Objected to.)

Ans. to Int'y. 30. None.

Int'y. 31. Whether or not, in such a case, would there be any reason to impute negligence, carelessness, or other fault to the boat keeper in charge of the pilot boat?

Ans. to Int'y. 31. Yes.

Answers of said Cunningham to the cross interrogatories.

1 + Int'y. Have you once before given your deposition in this case?

Ans. to 1 + Int'y. No.

2 + Int'y. From what treatises or what series of reports have you derived your knowledge of the law relating to the duties of sailing vessels and pilot schooners?

Ans. to 2 + Int'y. I have read Abbott on Shipping, and my ideas are formed from my reading, observation and experience.

3 + Int'y. Do you mean to be understood to say that a pilot schooner of ninety or a hundred tons, close hauled, is bound to give way to a coasting schooner of thirty or fifty tons going before the wind, and that if a collision should ensue, the pilot schooner would be alone to blame?

Ans. to 3 + Int'y. No.

4 + Int'y. Do you mean to say that a coasting vessel may run down a pilot schooner without keeping any look out for her, or keeping off a point?

Ans. to 4 + Int'y. No.

5 + Int'y. Do you mean to say that any vessel of any size, going before the wind or free, may run down a pilot boat which is seen in her vicinity without bearing away a point?

Ans. to 5 + Int'y. No.

6 + Int'y. If you say that the schooner of fifty tons must keep a look out for a pilot schooner of one hundred tons, state how large a schooner or other vessel must be to entitle her to run down a pilot schooner with impunity?

Ans. to 6 + Int'y. I don't know any size which authorizes a vessel to do that.

7 + Int'y. Suppose two vessels to be approaching each other with the wind south, one heading north-east, and the other east-south-east, which one would be close hauled and which one "going free," and how many points free?

Ans. to 7 + Int'y. The one going east-south-east would be close hauled; the other would be going free, and six points free.

8 + Int'y. State on which tack, larboard or starboard, each of these two vessels would be sailing?

Ans. to 8 + Int'y. Both on the larboard tack.

9 + Int'y. If there was danger of collision, which one of these two vessels would be bound to give way?

Ans. to 9 + Int'y. If the vessels are approaching other, the one going free is bound to keep out of the way of the one close hauled.

10 + Int'y. Did you ever have the charge of or navigate a pilot schooner, if so, for how long?

Ans. to 10 + Int'y. I never did.

J. A. CUNNINGHAM.

Deposition of Israel Whitney.

Int'y. 1. Please to state your age, place of residence, and occupation; whether or not you have followed the seas, and if so, for how many years, and in what capacities.

Ans. to Int'y. 1. I am fifty-nine years of age. I reside in Boston. I am a merchant. I followed the seas fourteen years as seaman and master, and have been several passages as supercargo.

Int'y. 2. Whether or not you have had experience in, and are acquainted with, the rules and usages of navigation and seamen, and are you or not familiar with the entrance to the harbor of Boston?

Ans. to Int'y. 2. It is now twenty-five years since I have been at sea, though since engaged somewhat in ships; and I have been since at sea, several times as passenger, and retained my interest in ships and navigation. Generally I am acquainted with the rules and usages of navigation and seamen, as they were in my time of practical experience, but having been out of practice long, I do not consider myself qualified as if all the time in practice. I am familiar with the entrance to the harbor of Boston.

Int'y. 3. Whether or not is there a rule of navigation which requires that when two vessels are approaching each other in opposite directions, one sailing free and the other close hauled, the one going free shall keep out of the way of the other?

Ans. to Int'y. 3. That is a rule.

Int'y. 4. Whether or not in a case where two vessels were sailing in the same direction, and *on the same tack*, one a little nearer to the wind than the other, would this rule apply, and require the vessel ahead, if she were sailing most free, to luff or bear away to avoid a collision?

(Objected to.)

Ans. to Int'y. 4. I think the vessel most to windward should hold her wind, and the other luff or bear away, with no circumstances but those stated in the question.

Int'y. 5. Whether or not in such a case would it be the duty of the vessel astern to luff or bear away, so as to avoid running into the other, without regard to which was sailing most free?

(Objected to.)

Ans. to Int'y. 5. It seems to me that the vessel astern should manœuvre to keep out of the way.

Int'y. 6. Suppose a fair day, smooth sea, and seven knot breeze, and two vessels to be sailing on the same tack, one a brig, a little ahead and to windward, sailing within one or two points as near as she could go, the one astern and to leeward, a schooner close hauled, and the faster sailer—that if both vessels held their courses, the schooner would overtake the brig and strike her on the lee bow; whether or not would the rule mentioned in the third interrogatory apply to this case, and require the brig to luff or bear away, because she was sailing most free?

(Objected to for substance.)

Ans. to Int'y. 6. I should think, under the circumstances stated, the schooner should keep out of the way.

Int'y. 7. Whether or not does that rule apply to vessels sailing on the same tack, or is confined to the case of vessels approaching each other on opposite tacks?

(Objected to for substance.)

Ans. to Int'y. 7. It does not apply to vessels approaching each other on opposite tacks and close hauled, because the rule is that the vessel with starboard tacks on board has the right of way, and the other has to keep out of the way, unless there is danger.

Int'y 8. Suppose, in the case stated in the fifth interrogatory, that the brig was sailing along rocks about one hundred yards to windward, so that she could not luff without danger of running on to them unless she luffed up into the wind, and could not bear away without danger of striking the schooner, would it or not be the brig's duty to luff up and stop her headway and wear round?

(Objected to.)

Ans. to Int'y. 8. I should think the brig's duty was to luff and let the schooner shoot by, if the brig could do it with safety, but that she was not to endanger herself to do it.

Int'y. 9. Whether or not in such a case would it be the duty of the schooner to luff or bear away, so as to prevent a collision?

(Objected to.)

Ans. to Int'y. 9. If the schooner could bear away I think she should; both are bound to do their part to avoid the collision.

Int'y. 10. If both vessels holding their course, the schooner to leeward would strike the brig on her lee bow, which would be bound to alter her course so as to avoid a collision?

(Objected to.)

Ans. to Int'y. 10. It seems to me the schooner to leeward should.

Int'y. 11. Suppose the brig to be a coaster of about 275 tons, fully laden, sailing by the Graves, two points free, towards the Light House

Channel for Boston, the schooner to be about 53 tons, close hauled, intending to go through a passage next south-west of the Graves into Broad Sound, which vessel would be bound to give way? Please to give the reasons of your judgment.

(Objected to.)

Ans. to Int'y. 11. According to the rule I have laid down before, the vessel sailing free should give way to the vessel close hauled, and therefore the brig should give way to the schooner. The reason is the general rule that the vessel sailing free should keep out of the way of the one close hauled.

Int'y. 12. Suppose such a brig to be sailing by and outside of the Graves, near the entrance of Boston harbor, bound for Light House Channel, steering S. S. W., wind about W. N. W., going about 6 knots, and within a point or two as close to the wind as she could go, the Graves being a little forward of her starboard beam, and from 80 to 100 yards off, that a Boston pilot boat of the first class in charge of a boat keeper, should come up on her lee bow, on the same tack but close hauled, steering directly for the Graves, intending to pass through a gap in them into Broad Sound; that the two vessels sailing on converging lines, the boat would overtake the brig and strike her on the lee bow if neither altered its course, that for the brig to luff as much as she could without coming into the wind would not prevent a collision, and that she could not do that without danger of going ashore, and that to leeward was the open sea; what in such a case ought the brig to do, and what the pilot boat?

(Objected to.)

Ans. to Int'y. 12. I should suppose the pilot boat should keep out of the way, and the brig was not required then to do anything, if the point was gained.

Int'y. 13. Whether or not would there be any duty on the part of the brig to luff or bear away?

(Objected to.)

Ans. to Int'y. 13. I think the brig should luff all she could, not being close hauled, and after she had luffed, the boat should keep out of her way.

Int'y. 14. Whether or not it would be her duty to keep her course?

(Objected to.)

Ans. to Int'y. 14. No; I should think the brig's duty would be to do what she safely could to aid the schooner to keep out of the way.

Int'y. 15. Whether or not it would be the duty of the pilot boat to luff and go under the brig's stern, or to bear away?

(Objected to.)

Ans. to Int'y. 15. It would be the duty of the pilot boat to get out of the way after the brig had done what she could, and the pilot boat should do this the best way she could.

Int'y. 16. If the boat keeper in charge of the pilot boat did not observe the course of the brig, or that there was danger of a collision,

until he heard the ripple under her bows, would that or not indicate negligence on his part, and if yea, what degree of negligence?

(Objected to.)

Ans. to Int'y. 16. I should think it negligence — hardly gross negligence.

Int'y. 17. If he was hailed from the brig to keep off in season to do so and did not mind it, would or would not that show negligence, carelessness, or want of presence of mind on his part?

(Objected to.)

Ans. to Int'y. 17. I should think it would, in just the circumstances stated.

Int'y. 18. Is there or not any rule of navigation by which one vessel, because close hauled, has a right to compel another, going more free, to luff so as to run ashore or stop her headway, if the one close hauled has plenty of sea room to leeward, and could easily prevent a collision by luffing or bearing off herself?

(Objected to.)

Ans. to Int'y. 18. I should think not.

Int'y. 19. How would this be under the same circumstances if the vessels were approaching on opposite tacks? How if both were on the same tack, one astern and close hauled overhauling the other?

(Objected to.)

Ans. to Int'y. 19. Then a vessel cannot be compelled to endanger herself, in either case put in the question.

Int'y. 20. If a vessel under sail runs into one at anchor in broad day light and pleasant weather, which would be considered in fault?

(Objected to.)

Ans. to Int'y. 20. The one under way.

Int'y. 21. If, instead of being at anchor, the vessel ahead was a dull sailer, would it or not be the duty of the vessel astern to avoid running into her?

Ans. to Int'y. 21. I suppose it would.

Int'y. 22. In such a case, should or should not the vessel ahead keep her course, and the one astern do what was necessary to avoid a collision?

(Objected to.)

Ans. to Int'y. 22. If both vessels were close hauled, I should think the one astern should avoid the collision.

Int'y. 23. Would it or not make any difference in this respect if the vessel ahead was to windward, and had the wind a little more free than the other?

(Objected to.)

Ans. to Int'y. 23. I think it would make a difference in favor of the vessel further to windward.

Int'y. 24. Whether or not are there any reasons arising from the occupation, rig and easy management of pilot boats by which

more or less vigilance would be required of a merchant vessel to avoid a collision with them than with other vessels? If yea, state whyfully.

(Objected to.)

Ans. to Int'y. 24. I am not aware that there is; the pilot boat is more easily handled, and less vigilance is required of the merchant vessel, in my opinion, to avoid her.

Int'y. 25. Whether or not is this true of all places where vessels usually trade and pilots are to be found, so far as your experience goes?

(Objected to.)

Ans. to Int'y. 25. I think so.

Int'y. 26. Whether or not is it true of the harbor of Boston?

Ans. to Int'y. 26. I should think it was.

Int'y. 27. What kind of vessels is there used for pilot boats; how do they compare with merchant vessels, as to ease in managing, altering course, &c.?

Ans. to Int'y. 27. Schooner-rigged vessels of very fine model, and they are much quicker and more easily managed than merchant vessels.

Int'y. 28. Whether or not, according to the usages of seamen and rules of navigation in the case stated in the 10th and 11th interrogatories, would it be required of the master of the brig, if he knew the other vessel to be a pilot boat, to keep a look out for her, and take care to avoid a collision with her, provided he kept on his course?

(Objected to.)

Ans. to Int'y. 28. I think the master of the brig should keep a look out, and do what he safely could to avoid a collision, though he knew it to be a pilot boat.

Int'y. 29. Whether or not, if he kept his course, would he have the right to expect that the pilot boat would do what was necessary to avoid a collision?

(Objected to.)

Ans. to Int'y. 29. He would expect that certainly, and could keep his course, unless he saw the pilot boat was not doing her duty; then the master of the brig should do what he could to avoid the collision.

Int'y. 30. If he kept his course until he saw that the pilot boat did not intend to change hers, and would strike him on the lee bow, and then he ordered his helm hard down and was obeyed, and while he was swinging round the pilot boat crossed his bows, caught her rigging in the end of his jibboom, and was tipped over and sunk, whether or not in your judgment was there fault on his part?

(Objected to.)

Ans. to Int'y. 30. I should think that, under the circumstances stated, the master of the brig did right.

Int'y. 31. Whether or not in such a case would there be any reason to impute negligence, or carelessness, or other fault to the boat keeper in charge of the pilot boat?

(Objected to.)

Ans. to Int'y. 31. Not necessarily, I think, as he might say the brig has put her helm down, and I shall range ahead; his carelessness, if any, must have been before.

Answers of Israel Whitney to the cross interrogatories.

1 + Int'y. Have you once before given your deposition in this case?

Ans. to 1 + Int'y. I have not.

2 + Int'y. From what treatises or what series of reports have you derived your knowledge of the law relating to the duties of sailing vessels and pilot schooners?

Ans. to 2 + Int'y. From none.

3 + Int'y. Do you mean to be understood to say that a pilot schooner of ninety or a hundred tons, close hauled, is bound to give way to a coasting schooner of thirty or fifty tons, going before the wind, and that if a collision should ensue, the pilot schooner would be alone to blame?

Ans. to 3 + Int'y. No.

4 + Int'y. Do you mean to say that a coasting vessel may run down a pilot schooner without keeping any look out for her, or keeping off a point?

Ans. to 4 + Int'y. No.

5 + Int'y. Do you mean to say that any vessel of any size, going before the wind, or free, may run down a pilot boat which is seen in her vicinity without bearing away a point?

Ans. to 5 + Int'y. No.

6 + Int'y. If you say that the schooner of fifty tons must keep a look out for a pilot schooner of one hundred tons, state how large a schooner or other vessel must be to entitle her to run down a pilot schooner with impunity?

Ans. to 6 + Int'y. None can.

7 + Int'y. Suppose two vessels to be approaching each other, with the wind south, one heading north-east, and the other east-south-east, which one would be close hauled, and which one "going free," and how many points free?

Ans. to 7 + Int'y. The one heading east-south-east would be close hauled, the other would be six points off the wind or free.

8 + Int'y. State on which tack, larboard or starboard, each of these two vessels would be sailing?

Ans. to 8 + Int'y. Both would have their starboard tacks aboard.

9 + Int'y. If there was danger of collision, which one of these two vessels would be bound to give way?

Ans. to 9 + Int'y. I think the one sailing free.

10 + Int'y. Did you ever have the charge of or navigate a pilot schooner. If so, for how long?

Ans. to 10 + Int'y. I never did.

ISRAEL WHITNEY.

Deposition of R. B. Forbes.

Int'y. 1. Please to state your age, place of residence and occupation; whether or not you have followed the seas, and if so, for how many years, and in what capacities?

Ans. to Int'y. 1. My age is 52, on the 18th of last month, and I reside in Milton, Mass. Am a merchant. Have "followed the seas," beginning before the mast in October, 1817, and as a metier or calling, abandoned the sea in 1832, but have been much at sea since that time.

Int'y. 2. Whether or not you have had experience in and are acquainted with the rules and usages of navigation and seamen, and are you or not familiar with the entrance to the harbor of Boston?

Ans. to Int'y. 2. I have such general knowledge and experience of the usages of navigation and seamen as might be expected, and am somewhat familiar with the entrances to Boston harbor.

Int'y 3. Whether or not is there a rule of navigation which requires that, when two vessels are approaching each other in opposite directions, one sailing free and the other close-hauled, the one going free shall keep out of the way of the other?

Ans. to Int'y. 3. I think there is a general rule, or custom, that a vessel sailing free is expected to avoid one sailing on a wind, on the same tack or in the same direction.

Int'y. 4. Whether or not, in a case where two vessels were sailing in the same direction and *on the same tack*, one a little nearer to the wind than the other, would this rule apply and require the vessel ahead, if she were sailing most free, to luff or bear away to avoid collision?

(Objected to.)

Ans. to Int'y. 4. I think the rule or custom above stated would apply in the case stated, that is to say, one vessel going a point or two free, and the other on a wind, to leeward, and rather astern, provided there was not any special reason, making it dangerous for the weathermost vessel to luff.

Int'y. 5. Whether or not, in such a case, would it be the duty of the vessel astern to luff or bear away so as to avoid running into the other, without regard to which was sailing most free?

(Objected to.)

Ans. to Int'y. 5. It depends very much on what is meant by "astern." If the vessel close on a wind was directly astern, or within one, two, or even three points of astern, it would certainly be her duty to keep out of the way of the other.

Int'y. 6. Suppose a fair day, smooth sea and seven knot breeze, and two vessels to be sailing on the same tack, one a brig, a little ahead and to windward, sailing within one or two points as near as she could go, the one astern, and to leeward, a schooner, close hauled, and the faster sailer; that if both vessels held their courses, the schooner would overtake the brig, and strike her on the lee bow, whether or not would the rule mentioned in the third interrogatory apply to this case, and require the brig to luff or bear away because she was sailing most free?

(Objected to for substance.)

Ans. to Int'y. 6. I should say that, under these circumstances, the schooner ought to keep out of the way, and that she could not by good management foul the other.

Int'y. 7. Whether or not does that rule apply to vessels sailing on the same tack, or is confined to the case of vessels approaching each other on opposite tacks?

(Objected to for substance.)

Ans. to Int'y. 7. I think the rule or custom for vessels going free to avoid those on a wind, applies generally *in open sea*, whether they are going on the same or on different tacks?

Int'y. 8. Suppose, in the case stated in the sixth interrogatory, that the brig was sailing along rocks about 100 yards to windward, so that she could not luff without danger of running on to them, unless she luffed up into the wind, and could not bear away without danger of striking the schooner, would it or not be the brig's duty to luff up, or stop her headway, and wear round?

(Objected to.)

Ans. to Int'y. 8. I think it would be the duty of the brig to luff into the wind, heave all aback, and make a stern board.

Int'y. 9. Whether or not, in such a case, would it be the duty of the schooner to luff or bear away so as to prevent a collision?

(Objected to.)

Ans. to Int'y. 9. If there was time to do so, the schooner ought to bear away on seeing the brig luffing into the wind.

Int'y. 10. If both vessels holding their course, the schooner to leeward would strike the brig on her lee bow, which would be bound to alter her course so as to avoid a collision?

(Objected to.)

Ans. to Int'y. 10. Both should alter their course.

Int'y. 11. Suppose the brig to be a coaster of about 275 tons, fully laden, sailing by the Graves, two points free, towards the Light House Channel for Boston, the schooner to be about 53 tons, close hauled, intending to go through a passage next south-west of the Graves, into Broad Sound, which vessel would be bound to give way? Please to give the reasons of your judgment.

(Objected to.)

Ans. to Int'y 11. According to general rule, and irrespective of the class of the schooner of 53 tons, the brig, I think, would be

expected to give way, provided she could safely do so in reference to the proximity to the "Graves;" but a pilot boat, in ordinary weather, and under proper command, would, I think, be expected to take care of herself, and avoid the brig.

Int'y. 12. Suppose such a brig to be sailing by and outside of the Graves, near the entrance of Boston harbor, bound for Light House Channel, steering S. S. W., wind about W. N. W., going about six knots, and within a point or two as close to the wind as she could go, the Graves being a little forward of her starboard beam, and from 80 to 100 yards off—that a Boston pilot boat of the first class, in charge of a boat keeper, should come up on her lee bow, on the same tack, but close hauled, steering directly for the Graves, intending to pass through a gap in them into Broad Sound; that the two vessels, sailing on converging lines, the boat would overtake the brig, and strike her on the lee bow if neither altered its course; that for the brig to luff as much as she could without coming into the wind would not prevent a collision, and that she could not do that without danger of going ashore, and that to leeward was the open sea, what in such a case ought the brig to do, and what the pilot boat?

(Objected to.)

Ans. to Int'y. 12. The brig ought to come into the wind, and the schooner to keep off.

Int'y. 13. Whether or not would there be any duty on the part of the brig to luff or bear away?

(Objected to.)

Ans. to Int'y. 13. Answered above.

Int'y. 14. Whether or not it would be her duty to keep her course?

Ans. to Int'y. 14. Answered above.

Int'y. 15. Whether or not it would be the duty of the pilot boat to luff and go under the brig's stern, or to bear away?

Ans. to Int'y. 15. Answered above.

Int'y. 16. If the boat keeper in charge of the pilot boat did not observe the course of the brig, or that there was danger of a collision until he heard the ripple under her bows, would that or not indicate negligence on his part, and if yea, what degree of negligence?

(Objected to.)

Ans. to Int'y. 16. I think it would denote negligence, if in broad day light, and the boat keeper had the control of the boat.

Int'y. 17. If he was hailed from the brig to keep off in season to do so, and did not mind it, would or would not that show negligence, carelessness, or want of presence of mind on his part?

(Objected to.)

Ans. to Int'y. 17. If hailed by the brig in season to enable him to bear away, he hearing the hail and understanding it, he being in near proximity to the lee bow of the brig, it would be very careless in the boat keeper not to endeavor to bear away; but he might be in such a position as to imagine that he could luff clear of the brig, especially if he saw her luffing to.

Int'y. 18. Is there or not any rule of navigation by which one vessel, because close hauled, has a right to compel another, going more free, to luff, so as to run ashore or stop her headway, if the one close hauled has plenty of sea room to leeward, and could easily prevent a collision by luffing or bearing off herself?

(Objected to.)

Ans. to Int'y. 18. I do not know of any such rule, but the one on a wind might very justly expect the one going more free to do something else than running on shore, especially on rocks, to avoid a collision.

Int'y. 19. How would this be under the same circumstances if the vessels were approaching on opposite tacks. How if both were on the same tack, one astern and close hauled overhauling the other?

(Objected to.)

Ans. to Int'y. 19. On opposite tacks, one being *nearly on a wind*, and the other close hauled, the one on the starboard tack would keep her luff; but if the one on the starboard tack was going *palpably free*, wind abeam or abaft it, it would be her duty to keep clear of the one on the port tack. If one were astern, not on the lee bow and overhauling the other, it would be her duty to keep clear of the other, as she would have the command of position as well as of speed.

Int'y. 20. If a vessel under sail runs into one at anchor in broad day light and pleasant weather, which would be considered in fault?

(Objected to.)

Ans. to Int'y. 20. The one under sail.

Int'y. 21. If, instead of being at anchor, the vessel ahead was a dull sailer, would it or not be the duty of the vessel astern to avoid running into her?

Ans. to Int'y. 21. Certainly it would; but I desire distinctly to mean ahead, or somewhere nearly so, or bearing so that the stern one could, by ordinary skill, keep clear of the other.

Int'y. 22. In such a case, should or should not the vessel ahead keep her course, and the one astern do what was necessary to avoid a collision?

(Objected to.)

Ans. to Int'y. 22. In the case stated (as I understand it), it would be the duty of the vessel ahead to keep her course.

Int'y. 23. Would it or not make any difference, in this respect, if the vessel ahead was to windward, and had the wind a little more free than the other?

(Objected to.)

Ans. to Int'y. 23. It would make all the difference in the world, how much ahead and to windward the dull sailer was; almost all depends on this.

Int'y. 24. Whether or not are there any reasons arising from the occupation, rig and easy management of pilot boats, by which more or

less vigilance would be required of a merchant vessel to avoid a collision with them than with other vessels? If yea, state why fully.

(Objected to.)

Ans. to Int'y. 24. I should say generally, and particularly near the land, a merchant vessel of respectable size, say from an ordinary coaster of 150 tons or 200 tons to a ship, would expect a pilot boat in the day time to keep out of her way, and at night, under ordinary circumstances of weather, to show a light. Pilot boats are generally cruising, prepared to tack or wear at a moment's notice, and can do it much more readily than a coaster of 150 or 200 tons up to a ship. The vigilance and state of preparation of the merchant vessel, particularly near the land, ought not to be relaxed any more when approaching a pilot boat than when approaching a vessel of her own class.

Int'y. 25. Whether or not is this true of all places where vessels usually trade, and pilots are to be found, so far as your experience goes?

(Objected to.)

Ans. to Int'y. 25. I think this is true of all places where I have been.

Int'y. 26. Whether or not is it true of the harbor of Boston?

Ans. to Int'y. 26. True as to Boston, certainly.

Int'y 27. What kind of vessels is there used for pilot boats? How do they compare with merchant vessels as to ease in managing, altering courses, &c.?

Ans. to Int'y. 27. Hereabouts, on the coast of America, pilot boats are proverbially easy to manage. They are fore and aft, or "pilot-boat rig," and are much more easy to manage than the larger-sized merchant vessels, though there are many small merchant vessels, which are even more easily managed, and draw less water, than pilot boats generally. Some pilot boats draw 9 or 10 feet, while some schooners of 100 tons and more draw much less.

Int'y. 28. Whether or not, according to the usages of seamen and rules of navigation, in the case stated in the 10th and 11th interrogatories, would it be required of the master of the brig, if he knew the other vessel to be a pilot boat, to keep a look out for her, and take care to avoid a collision with her, provided he kept on his course?

(Objected to.)

Ans. to Int'y. 28. It would be the duty of the brig to do all in her power to prevent a collision; she would be bound to keep a look out for the pilot boat, and ought not to go on persistingly by any right that I know of.

Int'y. 29. Whether or not, if he kept his course, would he have the right to expect that the pilot boat would do what was necessary to avoid a collision?

(Objected to.)

Ans. to Int'y. 29. Certainly he would expect the pilot boat to do all that could be done to the same end. I don't think that any

maritime rule, especially in the open sea, can justify a vessel in running into another, simply because he may happen to be on the right tack.

Int'y. 30. If he kept his course until he saw that the pilot boat did not intend to change hers, and would strike him on the lee bow, and then he ordered his helm hard down, and was obeyed, and while he was swinging round the pilot boat crossed his bows, caught her rigging in the end of his jibboom, and was tipped over and sunk, whether or not in your judgment was there fault on his part?

(Objected to.)

Ans. to Int'y. 30. That is all he could do, but he might do it in a bungling manner, so as to bring about or to hasten the casualty.

Int'y. 31. Whether or not, in such a case, would there be any reason to impute negligence, or carelessness, or other fault to the boat keeper in charge of the pilot boat?

Ans. to Int'y. 31. I should not impute carelessness in the manager of the pilot boat for keeping his luff, if he had good reason to think that the brig would perform the manœuvre properly, and that he, (the pilot boat), would clear her; that is to say, if the brig, fearing a collision, should put her helm hard down, let fly head sheets, and slack lee-fore braces, bracing up again quickly by the port braces as she came into the wind, and squaring main yards, put helm to starboard the moment headway ceased, she would go round on the port tack, and make a rapid stern board. The pilot boat might, in this case, if not actually in contact, safely keep her course. I may, perhaps, say in conclusion, that I can hardly conceive of a collision taking place under the circumstances named, of day light, clear weather, and smooth sea; and it appears to me that there must have been carelessness on both sides.

Answers of R. B. Forbes to the cross interrogatories.

1 + Int'y. Have you once before given your deposition in this case?

Ans. to 1 + Int'y. I have not given my deposition in this case.

2 + Int'y. From what treatises or what series of reports have you derived your knowledge of the law relating to the duties of sailing pilot schooners?

Ans. to 2 + Int'y. I cannot recall any particular treatise, or any series of reports, out of which I have derived my knowledge of the law or custom in regard to sailing vessels; the book of long experience and much thought in such matters is my guide.

3 + Int'y. Do you mean to be understood to say that a pilot schooner of ninety or a hundred tons, close hauled, is bound to give way to a coasting schooner of thirty or fifty tons going before the wind, and that if a collision should ensue, the pilot schooner would be alone to blame?

Ans. to 3 + Int'y. I should not say that a pilot boat schooner of ninety or a hundred tons is *bound* by any law to give way to a

schooner of thirty to fifty tons, going *before the wind*, because the latter would be easily hailed astern of the pilot boat.

4 + Int'y. Do you mean to say that a coasting vessel may run down a pilot schooner without keeping any look out for her, or keeping off a point?

Ans. to 4 + Int'y. I do not mean to say that a coasting or any other vessel may run down a pilot schooner, or any body else, without keeping a lookout for her, or keeping off a point.

5 + Int'y. Do you mean to say that any vessel of any size, going before the wind or free, may run down a pilot boat which is seen in her vicinity without bearing away a point?

Ans. to 5 + Int'y. I don't mean to say any such thing.

6 + Int'y. If you say that the schooner of fifty tons must keep a look out for a pilot schooner of one hundred tons, state how large a schooner or other vessel must be to entitle her to run down a pilot schooner with impunity?

Ans. to 6 + Int'y. I say that all vessels of all sizes must "keep a lookout" for all others, irrespective of sizes or tacks in which they may be sailing. And saying this, I say further that no *vessel* of *any* size is, in my opinion, "entitled to run down a pilot schooner with impunity."

7 + Int'y. Suppose two vessels to be approaching each other with the wind south, one heading north-east, and the other east-south-east, which one would be close hauled, and which one "going free," and how many points free?

Ans. to 7 + Int'y. The one going E. S. E., with the wind at S. on starboard tack, if a pilot boat, would be going free for her, but if a coasting brig or an ordinary square-rigged vessel, she would be pretty close on a wind for her rig and kind. The one heading N. E., with a south wind, would be going with the wind four points abaft the starboard beam, or from six to eight points free, according to the rig and sailing qualities.

8 + Int'y. State on which tack, larboard or starboard, each of these two vessels would be sailing?

Ans. to 8 + Int'y. The one going E. S. E., as above stated, is on the starboard tack, and the one going N. E., (with a south wind also), may also, if she has any tacks aboard at all, be said to be on the same tack.

9 + Int'y. If there was danger of collision, which one of these two vessels would be bound to give way?

Ans. to 9 + Int'y. The one going N. E., by general custom, must go ahead or astern of the one on a wind. I answer this question irrespective of any particular reference to other inquiries referring to sizes, &c., of the vessels.

10 + Int'y. Did you ever have the charge of or navigate a pilot schooner, if so, for how long?